## ELECTION COMMISSION, INDIA.

NEW DELHI,

*Dated the 18th November, 1967.*

### NOTIFICATION

**No. 82/MY/2/67** .—In pursuance of section 106 of the Representation of the People Act, 1951, the Election Commission hereby publishes the Order, pronounced on the 4th, 7th and 8th August, 1967, by the High Court of Mysore at Bangalore in Election Petition No. 2 of 1967.

### IN THE HIGH COURT OF MYSORE AT BANGALORE.

*Dated the Friday 4th, Monday 7th and Tuesday 8th days of August 1967.*

**Before**

### THE HON'BLE MR. JUSTICE A. NARAYAN PAI.

**Election Petition No. 2 of 1967.**

1. Khaje Khanavar Khaderkhan Hushenkhan, aged 30 years, Book Seller, residing at Shiggaon, District Dharwar, Mysore State.
2. Joshi Gangadhar Vasudev, aged 30 years, Chemist and Druggist, residing at Shiggaon, District Dharwar, Mysore State. .... *Petitioners.*

By Sri B. S. Patil, Sri F. B. S. Patil and Srimathi S. Premila.

*Vs.*

1. Siddavanahalli Nijalingappa, aged about 65 years, Chief Minister, Government of Mysore, residing at Bangalore (Vidhana soudha), Mysore State.

2. H. S. Hosamani, aged about 50 years, Returning Officer and Assistant Commissioner, Savanur Division, Savanur, District Dharwar, Mysore State. .... *Respondents.*

*Respondent No.* 1 By Sri G. R. Ethirajulu Naidu and Sri V. S. Malimath.

*Respondent No.* 2 By Sri E. S. Venkataramaiah, High Court special Government Pleader.

Election petition filed by the petitioners under Section 81 of the Representation of the People Act, 1951 challenging the election of the Respondent No. 1 to the Mysore Legislative Assembly from Shiggaon Constituency in the General Elections held in February 1967 and seeking an order that election of the first Respondent is declared void and that the Petitioner No. 1 has instead been duly elected and that all incidental reliefs inclusive of costs of this petitioner may be granted.

This Election Petition coming on for trial on Tuesday 4th, Wednesday 5th, Thursday 6th, Friday 7th, Monday 10th, Tuesday 11th, Wednesday 12th, Thursday 13th, Friday 14th, Monday 17th Tuesday 18th, Wednesday 19th, Thursday 20th, Monday 24th, Tuesday 25th, Wednesday 26th, Thursday 27th, Friday 28th, Monday 31st days of July 1967, Tuesday 1st, Wednesday 2nd, Thursday 3rd, Friday 4th, Monday 7th, and 8th days of August 1967, in the presence of Sri B S. Patil and F. B. S. Patil and Srimati S. Premila (fees vakalat on 28th July 1967) Advocate for the petitioners and Sri G. R. Ethirajulu Naidu and Sri V. S. Malimath, Advocates for the 1st Respondent and Sri E. S. Venkataramiah, High Court Special Government Pleader for Respondent No. 2 the Court made the following order these Friday 4th, Monday 7th, Tuesday 8th, days of August 1967.

## ORDER

Narayana Pai J :

At the General Elections of this year 1967, Mr. Siddavanahalli Nijalingappa who was at that time and still continues to be the Chif Minister of Mysore was returned unopposed to the Mysore Legislative Assembly from the Shiggaon Constituency of Dharwar District.

2. At the said election Khajekbanavar Khadarkhan Hussain Khan, the first Petitioner in this petition, was one of the candidates who had presented nomination. The second petitioner Gangadhar Vasudev Joshi is an elector in that constituency and a friend of the first petitioner. In the petition filed by them they pray that the election of Mr. Nijalingappa as aforesaid be declared void and that the first petitioner be declared duly elected.

3. Mr. Nijalingappa is impleaded as the first respondent.

4. The essence of the case as stated in the petition.—which I shall summarise presently and to the details of which I shall refer whenever necessary in appropriate context, is that the first respondent had not filed or caused to be filed any nomination paper at all or that nomination paper if any filed on his behalf suffered from fatal infirmities and that the withdrawal of the candidature said to have been made by the first petitioner had not in fact been made but that it has been made to appear so by the first respondent resorting to corrupt practices of bribery and undue influence through the instrumentality or agency of one Patil Puttappa. It is further alleged that in the said commission of corrupt practice which according to the petitioner was in the nature of a carefully calculated manoeuvre or manipulation, the Returning Officer of the constituency had also participated or rendered some assistance. He has therefore been impleaded as the second respondent in the petitioner. With particular refrence to him there is the further case that the first respondent had procured or obtained from

him, who is a person in the employment of the State Government, assistance in such a way as to amount to a corrupt practice under sub-section (7) of section 123 of the Representation of the People Act.

5. There were at the same election seven other candidates, namely, (1) Basvantrao Bullappa Mamle Desai (2) Ramachandra Chikko Patil (3) Mallasarjangouda Gurupadgouda Patil (4) Gadigeppagouda Chanbesangouda Patil (5) Amanullakhan Shaik Mohamed Khan Pathan, (6) Ayubkhan Mohamed Akbarkhan Pathan and (7) Abdulrashid Khandekar Ghouse Bannut. The withdrawal of candidature by these seven candidates is not called in question. In fact the petition relies upon that fact taken along with the alleged absence of the nomination of the first respondent as the ground for the second prayer namely, declaration that the first petitioner has been duly elected.

6. The petition opens with the statement that the first petitioner and the seven other candidates mentioned in the last preceding para were the only candidates and that upon the withdrawal of the other seven, the first petitioner became entitled to be forthwith declared elected.

7. The next important allegation in the petitions is that the second respondent Hanumanthappa Shivappa Hosamani is a trusted favourite of the first respondent, that there has been a special bond of interest between the two respondents extending over a long period commencing even some time before the bye-election held in Bagalkot Constituency in 1962, and that the first respondent had taken special care to see that the second respondent is posted as the Assistant Commissioner of the Revenue Sub-Division, Savanur, at what is described in the petition as 'the portentious juncture of the election time'. The suggestion made in the petition is that even in the course of the bye-election in Bagalkot in the year 1962, when also the first respondent was returned unopposed, the second respondent had rendered him special assistance by so

shaping things as to bring about an uncontested election of the first Respondent. It is further stated that after he was defeated at the polls from the Hosadurga Constituency during the General Election of 1962, the first respondent had taken fright for elections and that during the present elections he had been casting about to find out the best and the most convenient constituency from which he can manage to return unopposed.

8. It is against these statements or against the background of these allegations that the further allegations are made to the effect that as a matter of fact the first respondent's nomination was not at all filed in the Shiggaon Constituency either within the date or the time prescribed or allowed therefor by law, that the list or validly nominated candidates or even the notice of nominations did not contain the name of the first respondent, and that even at the time of the scrutiny of nomination papers neither the filing of the 1st respondent's paper nor its acceptance figured at all. Partly by way of probabilising the said statement of fact and partly by way of additional support to his main case, it is further alleged in the petition that the nomination paper if any filed for the first respondent suffered from certain fatal infirmities. One of them is alleged non-payment of the deposit as required under section 34 of the Representation of the People Act The first respondent is an elector not in Shiggaon Constituency but in the Chitradurga Constituency. It was therefore necessary to produce before the Returning Officer a certified extract or a certified copy of the portion of the electoral roll of the Chitradurga Constituency in which the name of the first respondent appears. The petition states that no such extract or copy was produced before the Returning Officer. Under Article 173 of the Constitution as amended by the Sixteenth Constitutional Amendment, it is necessary for a candidate at the election to subscribe to an oath or affirmation in the form (VII A) set out in the Third Schedule to the Constitution. The petition alleges that the provisions of the Article cannot be said to have

been properly complied with unless the affirmation or the oath required by it is made before or at any rate simultaneously with the presentation of the nomination paper and that there has not been such compliance with the Article in the case of the nomination paper if any filed on behalf of the first respondent in the Shiggaon Constituency.

9. For all these reasons, whether taken singly or cumulatively, the petition claims that the nomination of the 1st respondent must be taken to have been manoeuvred or manipulated and ushered in and that the declaration of the uncontested return of the first respondent is a mere concoction entirely unrelated to facts.

10. In addition, the petition charges the first respondent with the corrupt practices of bribery as defined by sub-section (1), undue influence as defined by sub-section (2) and the procuring of the assistance of Government servants as defined in sub-section (7) of section 123 of the Representation of the People Act.

11. Although the petition sets out the details in fairly lengthy paragraphs the substance of the allegation is the following.

12. On 20th January 1967 which was the day immdiately proceeding the date fixed for scrutiny of nomination papers, Patil Puttappa mentioned above and a son-in law of the first respondent called Mahalinga Setty are said to have caught hold of two other persons called Hotti Peerasabnavar Bhudusab Chamansab and Nadaf Mahamed Jaffar Sab and attempted to induce the first petitioner to withdraw his candidature by offering him or promising to secure for him a licence for his huller, to get him better patronage for his book selling business and to see generally that the first petitioner is helped, aided and supported for his material prosperity. It is further stated that Patil Puttappa requested the 1st petitioner to go with him and Mahalingashetty for further discussion, that when the 1st

petitioner insisted upon the second petitioner also accompanying him, Patil Puttappa offered no objection, that thereupon both petitioners were taken in a car to the house of one Hanumanthgouda Patil, and there, after they had spurned further attempts at inducement, they were subjected to threats as a consequence of which the 1st petitioner ultimately affixed his signature to a blank printed form. Even thereafter, the petitioners were denied opportunity of free movement and kept under virtual surveillance until the early hours of the morning of 22nd January.

13. In relation to the alleged corrupt practice under sub-section (7) of section 123, the general statement of particulars is that the particulars are same as those already set out in sub-paragraphs (a) to (h) of Para III of the Pitition.

14. On their release from the house of Hanumanthagouda on the morning of 22nd January, the petition states, the petitioners went to Hubli and after consulting a lawyer, Mr. S. S. Shetter, the first petitioner despatched a telegram to the Returning Officer, 2nd respondent, setting out the true facts. On the night of 22nd January the first petitioner is also stated to have informed the District Election Officer at Dharwar of the true facts and also made a speech at an election meeting held at Hubli. On the 23rd, the first petitioner after further legal consultation is also said to have despatched another telegram to the Returning Officer reiterating the stand or the position taken up by him in the first telegram.

15. Then follow the two prayers to which I have already made reference.

16. The first respondent has filed a detailed written statement. His defence is generally one of complete denial of every one of the allegations made in the petition. He expressly denies the alleged special bond of interest between him and the second respondent, and states that he cannot be described as this trusted favourite. He

denies that either Patil Puttappa or Mahalinga Setty or Chaman Sab or Mohamed Jaffar was in any sense an agent of his at or for the election, and further states that he had neither accorded previous consent to or subsequently ratified any of the acts attributed to any one of them in the petition. Now most of the facts alleged in the petition are according to the written statement of the first respondent, not within his personal knowledge. He therefore states in several places in his written statement that he has ascertained that the said facts are not true. For the present purpose, it is sufficient for us to note that either on his own knowledge or upon information so ascertained by him, the first respondent totally denies every one of the allegations made against him.

17. The written statement of the first respondent also states or sets out what may be regarded as his positive case. He states that he had authorised his proposer Hanumanthagouda A. Patil to make the necessary deposit under section 34 and to present his nomination paper to the Returning Officer and that he learns that Hanumanthagouda did so make the deposit and present the nomination paper within time on the 20th January 1967. On the following day 21st January 1967 the date fixed for scrutiny, the first respondent states that he reached the office of the Returning Officer at Shiggaon at about 2-30 P. M. and made and subscribed to the affirmation in the prescribed form before the Returning Officer. Thereafter, according to the written statement, the second respondent Returning Officer scrutinised all the papers and as there was no objection raised by anybody to any of the papers all the papers were accepted. Thereafter according to the first respondent, all the eight candidates other than himself and including the first petitioner delivered to the Returning Officer the notices of withdrawal. First Respondent avers that the Returning Officer after satisfying himself about the genuineness of such notices of withdrawal and the identity of the first petitioner who delivered his, accepted the same. As he, the first respondent, remained as the only candidate in the field, his friends including G. C. Patil congratulated him.

18. From what is stated above, it is clear that the case of the first respondent is that a valid nomination paper satisfying all the conditions necessary for its validity had been presented on his behalf and that the withdrawal of candidature by the first petitioner was brought about by the first petitioner personally presenting the notice of the withdrawal to the Returning Officer.

19. The second respondent has filed a separate written statement traversing such of the allegations in the petition as are directed against him.

20. While admitting that the first petitioner and the seven other candidates named by him and filed nominations at Shiggaon the second respondent adds that the first respondent had also filed his nomination. He denies that he is a trusted favourite of the first respondent or that there is any sort of intimacy or special bond of interst between him and the first respondent. He refers to his postings to Bagalkot and later to Savanur as postings made in the ordinary course of service in public interst by the State Government. He states positively that the first respondent's proposer H. A. Patil filed the nomination of the first respondent for Shiggaon Constituency on 20th January 1967 well within time, that the relevant extract of the electoral roll containing the name of the first respondent was enclosed with the nomination paper, that the requisite sum had been duly deposited under section 34 of the Representation of the People Act, that the first respondent did solemnly affirm in accordance with the law before him on 21st January 1967 before the scrutiny of his nomination paper for Shiggaon Constituency, and that the nomination paper of the first respondent having been scrutinised along with other nomination papers was accepted without any objection on the part of anybody. He then states that because he was the Returning Officer for not only Shiggaon but also Shirahatti and Kundagol Constituencies, he had notified on the 20th itself a programme for the scrutiny according to which the papers Shirahatti Constituency were to be taken first, those of Kundagol next and lastly the papers of Shiggaon. The

first respondent had also filed nomination paper in Kundagol Constituency. As he was not present at the scrutiny and at the time of the scrutiny it was found that he had not subscribed to the affirmation, the second respondent states that he rejected the nomination paper. When the nomination papers of Shiggaon Constituency were taken up for scrutiny and before the nomination paper of first respondent was taken up for scrutiny, he according to the written statement, appeared and took the necessary oath as prescribed by law. The second respondent further positively avers that the first petitioner presented in person before him his notice of withdrawal of his candidature in the prescribed form duly filled up and signed by him. He admits having received two telegrams purporting to be those from the first petitioner and states that because they were telegrams he did not take any action on them. He adds that the first petitioner having validly withdrawn his candidature, it was no longer open to him to cancel the withdrawal.

21. On these pleadings, the following issues were framed :—

(1) Do the petitioners prove that the nomination paper of the 1st respondent had not been presented at the election in question, or that if one such had in fact been presented, the same was invalid and in-operative in law for any one or more of the following reasons;

(a) That it was not accompanied by relevant portion of the electoral roll in which the name of the 1st respondent appeared ;

(b) that the deposit required by Section 34 of the Representation of the People Act had not been made in time ; and

(c) that oath or affirmation under Article 173 (a) of the Constitution had not been made as required by the Article.

(2) Do the petitioners prove that the 1st petitioner had not in fact withdrawn his nomination paper, or if he had, the same was invalid for any reason ?

(3) (a) Do the petitioners prove that Patil Puttappa, Mahalinga Shetty, Nalaf Mahmed Jafar Saheb and Hotti Peersabnavar Chamansab Ghudusab, referred to in paragraph III (i) of the petition, either offered inducements to the 1st petitioner or subjected him to threats with a view to secure his withdrawal of his nomination in the circumstances set out in sub-paragraphs (i) and (j) of paragraph III of the petition?

(b) Do the Petitioners further prove that the said four persons did so with the consent of the 1st respondent?

(4) Do the facts proved by the petitioners under issue No 3 establish the commission of the corrupt practice of bribery under Sub-section 1 and or undue influence under sub-section 2 of Section 123 of the Representation of the People Act invalidating the election of the 1st respondent?

(5) Do the petitioners prove that in the matter of presentation of the nomination paper of the 1st respondent and in the matter of withdrawal of the nomination of the 1st petitioner, the 1st respondent had secured the assistance of the 2nd respondent in such a way as to amount to corrupt practice under Sub-section 7 of Section 123 of the Representation of the People Act?

(6) Are the petitioners entitled to an order declaring the election of the 1st respondent void?

(7) Are the Petitioners entitled to a declaration that the 1st petitioner had been duly elected?

22. Both the Petitioners have given evidence as P. Ws. 6 and 5 respectively. In addition, they have examined four other witnesses P. W. 1 Hanumanthasa Pawar, P. W. 2 S. S. Shettar, P.W. 3 Chaman Sab Ghudu Sab, and P. W. 4 Mahamed Jaffar.

23. The first respondent has given evidence as R.W. 1. He has also examined Mr. G. C. Patil, Advocate, Hanumantha gouda Avyanagouda Patil and Gurupadappa Basappa Mahalinga Setty as R. Ws. 2, 3 and 4 respectively.

24. Respondent 2 examined himself as R. W. 5.

25. It will be seen from the issues that whereas the first two issues state the central or the principal points in controversy between the parties issues 3, 4 and 5 refer to the allegations of corrupt practice which really form the background of the controversy expressed in the first two issues. The corrupt practices which have been made the subject of issues 3 and 4 are directly related to the claim of the first petitioner as formulated in issue No. 2. The alleged procuration of assistance from the second respondent which is made the subject of issue No. 5 is related according to the allegations in the petition itself to both the acceptance of the nomination of the first respondent which is made the subject of first issue and the withdrawal of candidature by the first petitioner which is made the subject of the second issue. Having regard to this inter-relation between the points of controversy as formulated in the issues, the evidence also is inevitably directed towards or connected with the background facts from which arise all the arguments and contentions related to the first two issues. Hence atleast at the commencement it is not possible to distinguish or keep separate the discussion of the evidence in relation to one issue from discussion of the evidence in relation to other issues. I therefore consider it most convenient in the first instance to give the general features or outline of the case sought to be made by the parties on the basis of the oral evidence tendered and then proceed to discuss the issues at which stage I shall refer to the further details of the evidence in their appropriate contest.

26. The evidence of the first respondent in the real sense of the term, that is to say evidence in relation to relevant facts on which he can speak with personal knowledge, is limited. The details of his positive case as set out in the written statement are spoken to by G. C. Patil and Hanumanthagouda Patil (also referred to as H. A. Patil). In fact the oral evidence of G. C. Patil is practically exhaustive of the positive case of the first respondent relating to the presentation of his nomination paper and withdrawl

of candidature by all but the first respondent on the 21st. H. A. Patil who was the proposer and who presented the nomination paper with necessary accompaniments and deposit has given evidence which completes the picture. Evidence of Mahalinga Setty adds little or nothing to the evidence of G. C. Patil upon matters on which G. C. Patil has spoken. That part of his evidence which has relation to issues other than the first issue need not now be set out.

27. The picture or the sequence of events which can be gathered from the said evidence may be briefly stated as follows:

28. G. C. Patil was the official candidate sponsored by the Indian National Congress (hereinafter referred to as the Congress) at the Shiggaon Constituency B. B. Manle Desai was his substitute candidate also referred to as the dummy candidate. Manle Desai was the first to present his nomination paper on the 17th January. G. C. Patil presented his nomination paper on the 19th January. He states that immediately after presenting his paper he, Manle Desai and one Kalagimath, the Chairman of the Shiggaon Taluk Congress Committee (resident of Bankapur) left for Savanur and went to the house of an Advocate called Mr. S. G. Hiremath. The purpose of the visit was to discuss the details of his election propaganda. One of the questions which he wanted to discuss and settle was the need if any for setting up a separate election office at Savanur which on all hands is the biggest town in the Constituency with the largest concentration of votes. G. C. Patil requested Mr. Hiremath to invite to his place important persons of the place to discuss election matters. One of the persons who came at that invitation was Revanappa Havanagi. In the course of discussion, it is the evidence of G. C. Patil, the said Revanappa Havanagi suggested that it would be best if the first respondent could be requested to stand as a candidate from Shiggaon Constituency G. C. Patil adds that the said suggestion met with general approval of all the persons present and that he,

G. C. Patil, himself said that should a man like the first respondent agree to stand as a candidate from Shiggaon Constituency he would not only withdraw his candidature but also take the leading part in inviting the first respondent to come to Shiggaon as a candidate. The final result of the discussion was that it was decided that G. C. Patil, B. B. Mamle Desai, S. G. Hiremath, Katagimath and Hanumantha gouda Patil of Shiggaon should proceed to Hubli to meet the first respondent and secure his consent to stand as a candidate from Shiggaon. G. C Patil states that Revanappa Havanagi told him that the first respondent was expected to come to the house of his son-in-law Mahalinga Setty at Hubli that night, *i. e*, the night of 19th January. Having come to that conclusion G. C. Patil Mamle Desai, Hiremath and Katagimath came back to Shiggaon to take with them Hanumanthagouda Patil also. On being apprised of the discussions and the proposal, Hanumantha gouda Patil readily agreed to accompany the others to Hubli. All the five of them reached Mahalinga Setty's house at Hubli at about 8 or 8-30 in the night, expecting to meet the first respondent. Mahalinga Setty however told them that the first respondent was expected not that night but only the following morning at about 8 or 8-30. The visitors told him the purpose of their visit and there was some short talk about it. At the desire of one of the visitors, Patil Puttappa was contacted by phone and requested to come to Mahalinga Setty's house. When he came the visitors requested him, as they had already requested Mahalinga Setty, to help them in persuading the first respondent to accept their suggestion and stand as a candidate from Shiggaon Constituency. Both G. C. Patil and Hanumantha gouda state that Patil Puttappa readily agreed to render them assistance so sought of him. Because the first respondent was expected only the next morning, the party dispersed agreeing to reassemble again the next morning.

29. On the following day all the five persons who had come from Shiggaon as stated above as well as Patil Puttappa waited for first respondent in Mahalinga Setty's

house from 8-30 A. M. onwards. He did not turn up til about 9 at which time they thought, particularly G. C. Patil, that the first respondent may not have much time to spare and that therefore they had better prepare the nomination paper and keep it ready for his signature. Accordingly, a blank nomination form said to have been carried by G. C. Patil with him was filled by Patil Puttappa. Hanumantha gouda Patil who was named as the proposer therein signed the same as proposer. At that time G. C. Patil states, he remembered that because the first respondent was an elector not in Shiggaon but in Chitradurga constituency, it would be necessary to have a certified extract of the relevant portion of the Chitradurga roll containing the name of the first respondent. When he mentioned the same, Mahalinga Setty said he had one with him and produced the same.

30. When the party was waiting for the first respondent, having made all the necessary papers ready a telephonic message came to Mahalinga Setty from Doctor Chandrasekhar, another son-in-law of the first respondent, also residing in Hubli. The message was that first respondent having come to Chandrasekhar's place and taken his breakfast there had just left for chitradurga stating that on the way he would be stopping at Haveri for a few minutes to meet one Basavaraj Magavi. When Mahalinga Setty passed on this information to the rest of the people there, all of them at once decided to start for Haveri and contact the first respondent either at Haveri or earlier if possible. To ensure that they would surely meet him, Patil Puttappa is said to have asked either his sub-editor or a clerk at an office of the papers called Vixvani and Prapancha run by him to ring up Basavaraj Magavi and request him to detain the first respondent awaiting the arrival of himself and other friends named above.

31. The party left in two cars. The first ahead of the other was that of Patil Puttappa in which only he and Mahalinga Setty travelled. The car was driven by a driver. All the other people who had come from Shiggaon were

accommodated in another car which followed that of Patil Puttappa.

The 1st respondent deposes that on 18th January 1967, he flew from Bangalore to Belgaum. From that place, he proceeded by car provided by one Mr. Helligeri, Advocate of Bagalkot, to Bagalkot, reached that place late in the evening that day. His purpose in going there was to present his nomination paper for the Bagalkot Constituency to the Returning Officer thereof. He had been selected by the Congress as its official candidate at the said constituency. He was in Bagalkot on the 19th and presented his nomination paper there somewhere between 2 and 3 in the afternoon. The deposit therefor was paid in cash by his Personal Assistant who was accompanying him. The 1st respondent also subscribed to the affirmation under article 173 of the Constitution in connection with his nomination paper. In the evening of 19th he returned to Belgaum and spent the night there.

It is the further evidence of the 1st respondent that although he had been selected by the Congress as its official candidate only in respect of the Bagalkot Constituency, several friends of his had been pressing him to stand as a candidate in different or other constituencies as well. He has also stated that the Central Parliamentary Board of the Congress, which finalises the list of official candidates of the Congress in various constituencies had been told by him of such pressing requests and that they had given him the liberty of filing his nomination papers in constituencies other than Bagalkot also, subject to the condition that ultimately he should select only one constituency for contest. While he was at Belgaum, the Chairman of the Taluk Congress Committee of Kundagol had approached him with a request to file his nomination in Kundagol Constituency also. He states that submitting to that pressing request, he had signed a nomination paper for Kundagol also and handed it over to him (the President of the Kundagol Congress Committee,) asking at the same time his Personal Assistant to pay

him Rs. 250 for making the necessary deposit. It was also been elicited from him that he had similarly affixed his signature in assent to nomination papers intended to be filed or presented in certain other constituencies also, such as Hoovinahadagali, Molakalmuru, Raibhag, etc.

34. On the morning of 20th January 1967, after taking his breakfast, the 1st respondent states, he proceeded to Hubli *enroute* to Chitradurga. At Hubli, as already stated, there reside two sons-in-law of his, Dr. Chandrasekhar and Mahalingashetty. Chandrasekhar is a member on the teaching staff of the Medical College there and is also reading for his M. D. Degree. He stays in the quarters allotted to him by the College in the College Campus itself. Mahalingashetty stays in a locality called Deshpande Nagar. On the 20th when he came to Hubli, the 1st respondent states, he went straight to the house of Dr. Chandrasekhar. He had very little time, according to him, to spare and therefore left the place immediately after taking some breakfast at Chandrasekhar's place. Before he left, he told his son-in-law that he had some work or business with Basavaraja Magavi at Haveri who was the official candidate of the Congress in the Haveri Constituency.

35. Haveri is about 48 miles from Hubli; Shiggaon is about 27 or 28 miles.

36. The 1st respondent states that when he was just about two or three miles before Haveri he was overtaken by two cars, at which he stopped his own car. The two cars, which overtook him, were the cars in which the party who left Mahalingashetty's place was travelling. According to the evidence, it is Patil Puttappa's car which first overtook the 1st respondent's car. When the 1st respondent stopped his car. Puttappa, Mahalingashetty, G. C. Patil and others travelling in the second car got down and went to him and requested him to accept their invitation to stand as a candidate from the Shiggaon Constituency. According

to the evidence of the 1st Respondent as well as other witnesses, he was not in the first instance willing to accept this invitation. But he was prevailed upon by Patil Puttappa, G. C. Patil and Mahalingashetty and others to at least sign his consent on the nomination paper already prepared; he was also told by those friends that he had anyhow time till 23rd January 1967, the last day fixed for withdrawals, to make up his mind. As he had, according to him, very urgent and important work waiting for him at Chitradurga, he declined their request to go back to Shiggaon to present the nomination paper and subscribe to the affirmation. He, however, promised to come back the following day to subscribe to the affirmation. He asked his son-in-law Mahalingashetty to pay a sum of Rs. 250 to Hanumathgouda Patil to make the necessary deposit. Having said so, he proceeded to Chitradurga.

37. Mahalingashetty then paid Rs. 250 into the hands of Hanumanthagouda Patil. Thereafter, both he and Patil Puttappa, according to the evidence of all the witnesses, returned direct to Hubli; G. C. Patil and others went to Shiggaon.

38. At Shiggaon, they went first to the house of Hanumanthgouda Patil for lunch, after finishing which Hanumanthgouda Patil, S. G. Hiremath, Katagimath and probably others also went to the office of the Returning Officer, the 2nd respondent, to present the nomination paper. It is the evidence of Hanumanthgouda Patil corroborated by G. C. Patil that he handed over to the 2nd respondent the nomination paper, a certified extract from the Electoral Roll of Chitradurga in which the name of the 1st respondent appears, as well as Rs. 250.

39. The nomination paper has been marked as Ex. R. 11 and the certified extract from the Chitradurga Electoral Roll Ex. R 12.

40. Having finished their work, G. C. Patil states, Hanumanthgouda Patil went back to his house in Shiggaon, and himself and Hiremath went to Savanur wherefrom he

went straight to his native village Bad and spent the night there.

41. The next morning, *i. e.*, 21st January 1967, G. C. Patil states, he went to the office of Returning officer at about 10-30 A.M. By about 11 O clock people started collecting, including the candidates of Kundagol, Shirhatti and Shiggaon. Mahalingashetty deposes that he went there at about 11 O'Clock. It is his evidence that Patil Puttappa also went there. G. C. Patil states in his evidence that when they had met the 1st respondent before Haveri on the previous day, they had requested Patil Puttappa and Mahalingashetty to come to Shiggaon the following day because the 1st respondent was also expected. From Savanur, Revanappa Havangi had also come.

42. G. C. Patil states that Revanappa Havangi told him that the three candidates from Savanur, *viz.*, Ayubkhan Patan, Amanulla Khan Patan and Abdul Rashid, as well as R. C. Patil of Kalakond village, had expressed their willingness to withdraw their candidature in the event of the 1st respondent standing as a candidate from Shiggaon. So far as G. C. Patil and Mamle Desai are concerned, they were already official and dummy candidates of the Congress and were willing to withdraw their nominations in favour of the 1st respondent. There remained M. G. Patil and the 1st petitioner belonging to Shiggaon as candidates. They were, according to the evidence of G. C. Patil, walking about in the compound of the Office, apparently waiting for the scrutiny of their nomination papers. G C. Patil states that he and S. G Hiremath approached both of them and told them that because the 1st respondent was going to stand as a candidate in Shiggaon Constituency, the six of the candidates stated above had already expressed their willingness to withdraw and added that it would be good and graceful if they two, *viz*, M. G Patil and the 1st petitioner agreed to withdraw their candidature. That request, according to G C Patil, was accepted by both of them. Thereon, S. G Hiremath stated that if all the candidates were willing to withdraw their nominations, the best thing for them to

do would be to keep all the withdrawal forms ready and to present them after the arrival of the 1st respondent and in his presence. The said suggestion of S. G. Hiremath was also accepted by all the candidates. Then, he states, the candidates went here and there to fill in their withdrawal forms. So far as he himself is concerned, he sat under a tree filled in his withdrawal form.

43. The time up to 2-30 p. m. was taken by the Returning Officer for the scrutiny of the nomination papers of Shirhatti and Kundagol Constituencies. The evidence of G.C. Patil is that at about 2-30 P.M. they were told that the scrutiny of Shiggaon Constituency nomination papers would be taken up and that the returning Officer had requested all the Shiggaon Constituency candidates to go into his office. Till then the 1st respondent had not come. All the candidates including G. C. Patil went into the office. Mahalingashetty says that he remained in the compound as he had been throughout. Just 3 to 6 minutes thereafter, according to his evidence, the 1st respondent arrived in his car whereupon he (Mahalingashetty) rushed up to his car and told him that the scrutiny of the nominations of Shiggaon Constituency had just been taken up and that therefore he had better go to the office immediately.

44. The reference in the evidence of G. C. Patil to the arrival of the 1st respondent is in the following terms :—

> "At about 2-30 P.M. the scrutiny of the nomination papers of Shiggaon Constituency was taken up. We then, all of us candidates went in; when the Returning Officer was still in the act of perusing the papers, the 1st respondent entered the office".

45. The reference to the same event in the evidence of the 1st respondent is in the following terms :—

> "From Hospet I proceeded to Shiggaon. I went to the Office of the Returning Officer at Shiggaon.

I reached there at about 2-?0 P.M. When I reached there, there were people waiting outside the office. They told me that the scrutiny of the nomination papers of Shiggaon Constituency has just been taken up and that I may go in. I went in and asked the Returning Officer to take my affirmation. The officer administered the affirmation to me. Ex. R-13 is the affirmation subscribed to by me."

46. The evidence of G. C. Patil on the point is little more detailed and descriptive. There is, it seems, in the room occupied by the 2nd respondent for the purpose of his election office a raised dais. Till the arrival of the 1st respondent, the Returning Officer was sitting below the dais in company of others. When the 1st respondent arrived and stated that he wanted to subscribe to the affirmation, he took the 1st respondent to the dais and on the dais the affirmation was administered. As I shall have occasion to say later, the evidence of the 2nd respondent as R-W. 5 is also to the same effect, *viz.*, that he took the 1st respondent on the dais for the purpose of administering the affirmation. According to the evidence of the 2nd respondent, he gave the text of the affirmation in the hands of the 1st respondent who read it aloud, whereafter he signed the same after writing "affirmed and subscribed before me."

47. The scrutiny of the papers then went on. The uniform evidence of all the witnesses for the respondents is that no one raised any objection to any of the nomination papers and that the 2nd respondent accepted all of them as valid nominations.

48. Immediately thereafter, according to the evidence, all the eight candidates, other than the 1st respondent, presented their notices of withdrawal to the 2nd respondent. The witnesses further state that the 2nd respondent questioned each one of these candidates whether they were withdrawing their candidature and after receiving the answer in the affirmative and after satisfying himself about

their signatures, he made a list of notices of withdrawal and put up the same on the Notice Board of his office.

49. With that, the details of the election so far as the candidates themselves were concerned were over: although the official declaration was postponed till after 3 O'Clock on 23rd January 1967, the last day fixed for withdrawals, there remained no doubt in the mind of anybody that the 1st respondent would be declared returned unopposed, as he was the only candidate from Shiggaon Constituency. So when he came out to the varandah of the office, there was *Jai Jai Kar* according to Mahalingashetty and garlanding of him according to all witnesses.

50. We are not concerned with the subsequent events to any great extent. But as some argument has been addressed on behalf of the petitioners in relation to one or two of them, I will briefly summarise what happened subsequently as appears from the evidence for the 1st respondent.

51. Earlier in the morning at about 11-30, Hanumanthgouda Patil had come to the office of the Returning Officer. He states that when he reached there, he found G. C. Patil and others including Revanappa Havangi and the 1st petitioner, and that G. C. patil told him that he had already heard from Revanappa Havingi that three candidates from Savanur and R. C. Patil were willing to withdraw their candidature. Hanumanthgouda Patil did not stay very long at the Office. He told G. C. Patil that he might bring to his house for food the 1st respondent and other persons who might have come there from out-stations. Having said so, he returned home at about 12 O'Clock.

52. At about 2-30 P.M. after the work at the office of the Returning Officer was over as stated above, the 1st respondent, all the candidates of Shiggaon, as well as the candidates and other persons who had come from Shirhatti and Kundagol, went to the house of Hanumanthgouda Patil. Those who had come from ohter places were given

lunch and others light tiffin. Thereafter G. C. Patil made short speech congratulating the 1st respondent, to which the 1st respondent replied suitably.

53. Thereafter, at the request of the people of Savanur, the 1st respondent went to Savanur and had tea at two places—that of Lalatappa Havangi and of another candidate Ayubkhan or Amanulla Khan and heard a short speech made at the second place. From there, at the request of Katagimath, he went to Bankapur and had tea there in the presence of some important persons. With that, the events of the day came to a close.

54. The 1st respondent proceeded to Chitradurga. Mahalingashetty and Patil Puttappa who had accompanied the 1st respondent to Savanur and Bankapur returned to Hubli. Mahalingashetty says that he travelled with and in the car of G. C. Patil. We do not know in what car Patil Puttappa and others went.

55. Hanumanthgouda is clear in his evidence that he did not accompany the 1st respondent either to Savanur or to Bankapur.

56. That completes the statement of the 1st respondent's case.

57. The case of the 1st petitioner is spoken to by five witnesses including himself.

58. The 1st petitioner presented his nomination paper on 19th January 1967. He opens his evidence by deposing to this fact and denying as false the case of the 1st respondent that a nomination paper had been filed by or on behalf of the 1st respondent. His reason for the said denial is that when at about 3-30 P. M. on 20th January 1967 he had gone to the office of the Returning Officer, he did not see the name of the 1st respondent in the list of candidates. He deposed in Kannada and used the expression ".

59. The rest of the evidence for the 1st petitioner relates to events of the evening or night of the 20th and of subsequent days.

60. The earlier of the events are spoken to by two witnesses, P. W. 3 Chamansab and P. W. 4 Mohamad Jaffar. The immediately succeeding events which are of greatest importance from the point of view of the petitioners are spoken to by the petitioners themselves as P.Ws. 5 and 6.

61. Chamansab, Mohamad Jaffar and the 1st petitioner reside in the same locality or street called Khajekhanavara Galli. It is also the evidence of Mohamad Jaffar that he and Chamansab are friends and generally move together. On a certain Friday which, from the context and other events, may be identified as Friday the 20th January 1967 Mohamad Jaffar and his friend Chaman Sab were standing outside the former's house about one hour after sunset. At that time, one Gudusab Dakhni said to be a peon working at the Taluk Office came to Jaffar and told him that the Prant Officer (meaning the 2nd respondent in this case) wanted to see him. To Jaffar's question why the Prant Officer wanted to see him, Gudusab was not in a position to give any reply. Thereupon Jaffar and Chaman Sab at his request proceeded to the Office of the Prant Officer.

62. When they reached the office, they found sitting with the 2nd respondent two other persons who are later identified in the evidence as Patil Puttappa and Mahalinga shetty. Both P.Ws. 3 and 4 say that on their arrival, the 2nd respondent himself enquired of Jaffar about his acquaintance with the 1st petitioner and asked him whether he could not persuade the 1st petitioner to withdraw his candidature and that when he expressed his difficulty in the matter because the 1st petitioner had been sponsored by several people of the place, the 2nd respondent pressed further and stated that it would be to the advantage of both Jaffar and the 1st petitioner if the 1st petitioner withdraws his nomination. The 2nd respondent, according to the evidence, further stated that the two gentlemen sitting with

him would also accompany the witnesses and that all of them might go for the purpose of persuading the 1st petitioner to withdraw his nomination.

63. Thereafter, according to P. Ws. 3 and 4, themselves, Patil Puttappa and Mahalingashetty came out and sat in a car which was waitingoutside the Taluk Office and proceeded towards the house of the 1st petitioner. In the car, Patil Puttappa made enquiries of Mohamad Jaffar whether the 1st petitioner had any assets and property. He also asked Jaffar about the general financial position of the 1st petitioner. When Jaffar told him that the 1st petitioner had some lands, a shop and a flour mill and that he was waiting for a license for his huller which he had been trying to get for a long time, Patil Puttappa at once told him that he would get him the necessary license for the huller.

64. When they reached the 1st petitioner's house, Jaffar got down and went to fetch the 1st petitioner. Not finding him there and thinking that he might be in the shop of his friend, the 2nd petitioner they proceeded towards the shop of the 2nd petitioner. The car stopped at a road-crossing a few paces before the shop, and Jaffar went to Joshi's (2nd petitioner's) shop and came back with the 1st petitioner.

65. When Jaffar returned with the 1st petitioner to the car, the evidence of both P. Ws. 3 and 4 as well as the 1st petitioner is that Patil Puttappa started persuading the 1st petitioner to withdraw his nomination. He is said to have told him that the 1st petitioner has lands, a bookshop and a flour mill and that it was not wise for him that he should interest himself in elections or waste his time about elections and that it would be good if he should withdraw his nomination. The 1st petitioner is said to have resisted him and stated that he distinct idea of contesting the election and not with the idea of withdrawing the same subsequently. To further attempts on the part of Patil Puttappa in the same direction, the 1st petitioner is said to

have asked him the straight question why and for whose benefit he should withdraw his nomination. When in reply thereto Patil Puttappa said that the requet was made for the benefit of the 1st respondent, the 1st petitioner is said to have expressed his great surprise and stated that the 1st respondent had not even filed his nomination paper in Shiggaon. The further evidence of the 1st petitioner and his witnesses P. Ws. 3 and 4 is that when the 1st petitioner stated as above, Patil Puttappa stated that everything would be made all right".

66. The next stage in the persuasion according to the evidence was that Patil Puttappa told the 1st petitioner that he had something more to say and that it was not proper to discuss the same on the street and that therefore the 1st petitioner might come in his car. Here again that 1st petitioner is said to have resisted the request and later agreed to go on condition that the 2nd petitioner is also permitted to come with him. To this suggestion Patil Puttappa had no objection, whereupon the 1st petitioner went back to the shop of the 2nd petitioner and came back with him to the car.

67. Both the petitioners got into the car. When the car left, P. Ws, 3 and 4 returned home.

68. The description of subsequent events given by the 2nd petitioner as P. W. 5 is more detailed and more graphic. Except in one or two particulars, the evidence of both the petitioners is the same in regard to the said details.

69. According to the evidence, the car proceeded straight to the house of Hanumanthgouda Patil which is situate on the outskirts of the town. When they reached the house, Hanumanthgouda who was standing on the Katta welcomed them. All the four got down and entered the house.

70. Patil Puttappa once again started his request to the 1st petitioner to withdraw his nomination. Both the

petitioners say that the 1st petitioner continued to resist those requests. At one stage, Patil Puttappa is said to have addressed the 2nd petitioner to the effect that the 1st petitioner has behaving very unwisely (
and requested the 2nd petitioner to give him proper advice. The reply of the 2nd petitioner thereto was that the 1st petitioner had been sponsored by important men of the locality, that he was expecting full support from all Muslims in the Constituency and also from a good number of Hindus and that he the 2nd petitioner, himself saw no point in the 1st petitioner withdrawing his nomination paper. At that point Patil Puttappa is said to have chang-d his tone and s arted threatening the petitioners. He appears to have told them that he was himself a M. P. (Member of Parliament) and spoken to the effect that it might not be in the interests of the petitioners to resist his requests or that a refusal to accede to his request was fraught with dire consequences to the petitioners.

71. Ultimately, the 2nd petitioner says: he advised the 1st petitioner to sign because they were in quite a helpless condition. The house of Hanumanthgouda, as already stated, is situate on the ontskirts of the town. The witnesses say that it is a large house and that even if they had shouted out, it was unlikely that they would have got any help. It was in those circumstances that he advised the 1st petitioner to accede to the request of Patil Puttappa.

72. The ultimate request accepted under threats was that the 1st petitioner should sign a blank printed form and two blank white sheets of paper. It is to that request that the 1st petitioner submitted. The situation is described by the 1st petitioner in the following terms:—

> "Then Patil Puttappa changed his tone and said that it will not be good or safe for me to continue to refuse his request, threatened me whether I would like to go on with the election or prefer to live in safety, said that he was an M. P. and that therefore he could do anything to me. He

produced a blank printed from and two blank sheets of white paper, asked me to sign them, and threatened that I will not be allowed to go unless I affix my signatures to the same. I then looked towards the 2nd petitioner. He was also threatened in the same way. Ultimately he said to me that there was no escape for us and that therefore I might sign the papers as desired by Puttappa. Then against my will and submitting to the pressure of Puttappa, I signed those papers."

73. Then, both the petitioners say. Puttappa took possession of those papers and left the place in company of Mahalingashettv after leaving instructions with Hunumanthagouda Patil not to release or allow them to leave the house until he (Patil Puttappa) permits them to go, To that request or direction of Patil Puttappa Hanumanthagouda Patil is said to have nodded assent.

74. According to the petitioners, Hunumanthgouda Patil is said to have offered them food which they declined. He stated that at least they might take milk. They were given milk. Thereafter, the servants of Hunumanthgouda are said to have supplied them with Chaddars to sleep. Although the 1st petitioner himself says that he slept away that night, the 2nd petitioner states that he was so upset and depressed by the events that he did not get sleep at all. About mid-night, he tried to escape but failed in his attempt because he found his way barred by the servants of Hunumanthagouda sleeping across the way and also heard a dog growling at him.

75. The next morning, *i.e.*, 21st January 1967, some servants of Hunumanthgouda gave them water to wash their face and also offered tea. In the afternoon, they were given food and once again tea in the evening. They were not allowed to leave the house even on the night of 21st January 1967. But early in the morning at about 4-30 on

the 23nd of January 1967, some servants of Hunumanthagouda Patil came and stated that they might go.

76. From the house of Hunumanthagouda Patil, after they were released, both the petitioners came out. They walked towards the National Highway. There is other evidence, particularly answers elicited on behalf of the petitioners in the course of the cross-examination of G. C. Patil and Hunumanthgouda Patil, that thre is a short Katcha road leading from the house of Hunumanthgodua Patil to the National Highway, and that the a phalted road (dambara raste) leading from the National Highway into the Shiggaon town is slightly further away from that road.

77. The petitioners on coming out say that they felt so ashamed of themselves and therefore unwilling to show their faces to their friends in Shiggaon that they thought of going to Hubli for some time. Just then they saw goods truck travelling towards Hubli. They got into it and went straight to Hubli. They reached Hubli at about 7.00 or 7 30 in the morning and got down near a place which they describe as Siddesware Company: Near that place, it appears there is a canteen or hotel. They went into it for food. There, they found a copy of the issue of Samyukta Karanataka of 22nd January 1967 (Ex.R.1). The 1st petitioner picked it up and found on the 1st-page a news item announcing the unopposed or uncontested return of the 1st respondent. On reading it the 1st petitioner says that he was greatly surprised because he had not withdrawn his candidature at all He adds that he then felt that the signatures taken from him by Patil Puttappa on 20th night must have been utilised to his serious detriment in that way. He passed on this information to the 2nd petitioner and both of them made up their mind and the matter cannot be left at that stage and that they should do something about it. They decided to go and consult a lawyer. The 2nd petitioner suggested the name of Mr. S. S. Shettar P.W. 2 because besides being a lawyer he was himself a candidate for election at Hubli and may therefore be expected to be well

conversant with all the details of election law. They did not know his exact address, but making enquiries from place to place, they ultimately reached the house of Mr. Shettar at about 9.00 or so in the morning. Mr. Shettar was not at home. The petitioners had to wait a long time and it was 2-30 in the afternoon when Mr. Shettar arrived. He was also very busy and had not even taken his bath or food. He, therefore, asked them to wait for some time and ultimately came to them at about 3-00 P.M. The 2nd petitioner introduced the 1st petitioner to him and the 1st petitioner narrated all the facts to him. Mr. Shettar appears to have told them that he had no time to go into all those details, nor any time to go to the Returning Officer—the 2nd respondent in the company of the petitioners, but that in his view the best thing that they could do immediately was to despach at telegram to the Returning Officer—the 2nd respondent. Accordingly he drafted a telegram and handed it over to the petitioners. After getting the draft typed, they despatched the telegram from Hubli telegraph office at 4-35 P.M. That telegram received by the 2nd respondent is marked as Ex. P. 3. It reads:

> "Patil Puttappa took my signature on blank printed form in the house of Hanamantagouda at Shiggaon on 20th January 1967 in the presence of G. V. Joshi. Today I have read in newspaper that I have withdrawn it is false. I have not withdrawn. It is not presented by me. I do not know who has filled the contents of the form and presented it any. So if there is any notice of withdrawal, it is not valid. I am contesting from Shiggaon Constituency. Please take notice that I have not submitted my withdrawal notice."

78. Having despatched the telegram, the petitioners went back to Mr. Shettar's place. Once again he was not at home. He returned at about 7-00 or 8-00 in the evening. He had engaged a car for going to Dharwar on

some election work. It appears he also had some work with the Deputy Commissioner of Dharwar who is also the District Election Officer. The petitioners accompanied Mr Shettar in his car and went to Dharwar. The car was stopped at the Deputy Commissioner's Office at Dharwar. This is what Mr. Shettar says:

> "Again in the evening, if I remeber right, both the petitioners met me. Perhaps he was not satisfied with only sending the Telegram. I was then in a hurry to see the Deputy Commissioner, Dharwar, in connection with my own election work. Both the petitioners accompanied me. I casually mentioned to the Deputy Commissioner about the telegram drafted by me. As it was getting late. I returned from Dharwar to Hubli. That is all."

79. The 2nd petitioner states that when the car was stopped at the gate of the Collector's Office, the 1st petitioner and Mr. Shettar went into the Office and he the 2nd petitioner remained in the car until both of them returned after about half-an-hour.

80. The 1st petitioner states:

> "We then returned to Mr. Shettar's house. He was not there. He returned at about 7-30 or 8-00 P. M. He had arranged to engage a car for his canvassing work or some other work in connection with the election and was about to go in it. We also got into the car with him with a view to see the Collector. Stopping the car at the gate of the Office of the Collector. I told the Collector in Kannada all that had happened. Thereafter Mr. Shettar and the Collector spoke to each other in English. I cannot say what it was."

81. Thereafter. Mr. Shettar had to see somebody in Dharwar. After seeing him he and both the petitioners returned to Hubli by the same car. The car was stopped

at a locality called 'Durgada Bail'. When they reached there, an election meeting was going on and somebody was making a speech. It appears from the evidence of Mr. Shettar that it was an election propaganda meeting of the Jan Sangh party and that he also was expected to be there. I should have stated earlier that Mr. Shettar is the Vice-President of the Mysore State Pradesh Committee of the Bharatiya Jan Sangh and that he was an official candidate of the Jan Sangh party at Hubli town constituency.

82. Mr. Shettar states that the only person scheduled to make a speech was one Mr. Malya and that neither he nor the 1st petitioner was scheduled to make a speech. But when the 1st petitioner, who was standing at the fringe of the crowd along with his friend the 2nd petitioner, was recognized by some of the people, they wanted him to make a speech about the events of Shiggaon. The request for the same, according to the evidence, gained momentum with the result that the 1st petitioner was moved towards the rostrum, got up and made a speech. Both the petitioner simply say that he made a speech, but do not state what the 1st petitioner had spoken. Mr. Shettar, when questioned as to whether he could remember the substance of the speech, stated:

> "I do not remember the exact things that he said. All that I can recollect is that he the 1st petitioner said that he had not withdrawn his candidature."

83. Certain Extracts from the speech said to have been delivered by the 1st petitioner at that meeting appeared in the issue dated the 23rd of January 1967 of a Kannada daily paper called Visuala Karanataka. Ex. R. 6 is the issue. Portions of the speech reported in it have been separately marked as Ex. 6 (a) and (b). I shall have occasion to refer to them at a later stage.

84. Mr. Shettar P. W 2 after having given the 1st petitioner the draft of Ex. P. 3 had advised him that for

further advice he should go to Mr. B. S. Patil, Advocate, Dharwar. Hence, on the morning of 23rd January 1967, the petitioners went and saw him. The 1st petitioner appears to have requested Mr. B. S. Patil also to go with him to the Returning Officers but as there was no time to do so, 23rd being the last day for withdrawals, he drafted another telegram and asked the petitioners to despatch the same from Hubli telegraph office because despatch from Dhrawar was likely to be delayed The petitioners, therefore, came back to Hubli and despatched that telegram from Hubli Telegraph office at 12-05 P. M. That telegram is Ex. R. 8 and reads:

> "Hereby I am reiterating that I have neither submitted nor delivered any withdrawal under Section 37 of the Representation of People Act, neither have I authorised anyboby to deliver my withdrawal. The subscribing has been act of fraud. Please do not act on any fraudulent representation and do not be party to the fraud. Please note my candidature is intact and continues."

85. On the 25th of January 1967, the petitioners returned to Shiggaon. After further consultations and making necessary arrangements the petitioners filed this petition before this court on the 7th of March 1967.

86. These are the two versions placed before the Court by the contending parties in this case which in almost every material particular are diametrically opposed to each other. Except that some papers have been filed and marked as Exhibits, the evidence is entirely and exclusively oral evidence. In cases of this nature, where the dispute is in relation to an election, it is hardly ever possible for a Court to find a witness who may be described as totally disinterested. It is inevitable that in matters of election, persons who give evidence in election petitions will be persons who have some political or personal affiliation with one or other of the contending parties. Even apart from any

deliberate attempt at colouring the facts or uttering a falsehood, the very fact of personal interestedness or the fact of sharing a common interest with one or other of the contending parties may itself disable the witnesses from making a correct assessment of the value of the facts and events witnessed by them. It is, therefore, a matter of considerable difficulty for a Court to make a choice between one version and another version or to condemn out-right the evidence of one witness as totally unacceptable and accept as reliable the entire evidence of another witness. The only safe guide in matters of this nature is the availability of circumstances which may be regarded as unimpeachable on the basis of which the Court may make reasonably accurate comparison between what the witnesses say and the way persons of their mental and emotional build or make-up may be expected to react to situations, peculiarly in relation to the actual facts in issue.

87. Although the witnesses so far referred to will all fall into the category of witnesses whose evidence has to be scanned with caution in the manner aforesaid, there is one witness who may, in ordinary circumstances, be regarded as disinterested or not so interested in one or other of the parties as the other witnesses may be, and that is the 2nd respondent the Returning Officer. I used the word 'ordinary' advisedly for reasons which I shall state presently.

88. The Returning Officer is generally an officer of the Government before he is appointed or selected as Returning Officer by the Election Commission. The duties that he performs are undoubtedly quasi-judicial in nature. The Election Commission, which has issued a Handbook of Instructions to Returning Officers, has expressly drawn the attention of all the Returning Officers to this circumstances and has in very clear terms impressed upon them the necessity of observing that they describe as high judicial standards and also of bringing to bear on the discharge of their duties, not only impartiality, but also patience and courtesy.

89. Ordinarily, therefore, one should say that Returning Officers may be expected to place before the Court facts

or events as they have actually occurred with making any attempt to colour the same to the benefit of one party or the detriment of another party.

90 In this case, as I have already stated the petitioner have chosen to implead the Returning Officer as a regular party to the proceedings. They have also very seriously questioned his *bona fides* and in the course of arguments on their behalf strenuous attempts have been made to make out the original case of *mala fides* as well as to whittle down or totally take away the value of the evidence tendered by him.

91. Even so, it appears to me, the evidence of the Returning Officer in this case can be and perhaps is the only assistance which I have to assess the two versions placed before me by the contending parties. If it were a normal case with no attack made on the *bona fides* of the Returning Officer his evidence would have been of clear value as the evidence of a disinterested witness to test the truth or otherwise of the evidence tendered by other witnesses. Here in this case where his *bona fides* are questioned and he is charged with partisan feelings in favour of one of the contending parties, the extent to which that attack may succeed or fail will also give the measure of the value to be placed on the evidence tendered by the one or the other of the contending parties.

92. I therefore, proceed first to summarise his evidence and examine all the attacks made against him personally as well as in this capacity as Returning Officer before making any attempt to assess the value of the evidence tendered by or on behalf of the petitioners and by or on behalf of the 1st respondent.

93. The 2nd respondent was, as already stated, the Returning Officer for three Constituencies of Shiratti, Kundgol and Shiggaon He was at the relevant time the Assistant Commissioner of the Revenue Sub-Division of Savanur, comprising the said three taluks as well as another taluk called Hangal. It is because he was the Assistan

Commissioner that he came to be appointed as the Returning Officer.

94. He was for the first time promoted as Assistant Commissioner in May 1961 and posted to Bagalkot Revenue Sub-Division. This was by an order of the State Government dated 9th May 1961, an authenticated copy of which is produced as Ex. R. 17. By an order dated 10th June 1964, an authenticated copy of which is Ex. 18, he was transferred to Bangalore as the Personal Assistant to the Director of Public Health. On 2nd December 1965 by an order, whose authenticated copy is Ex. R. 19, he was transferred to Savanur as the Assistant Commissioner of the Revenue Sub-Division, Savanur. He took charge on the 4th of December 1965. He still continues to be there.

95. The Notification of the State Government calling for the election under Section 15 of the Representation of the People Act was published on the 13th of January 1967. According to the calendar of events fixed in accordance with the provisions of Section 30, the 20th of January was the last day for presenting nomination papers, 21st the date fixed for scrutiny and the 23rd the last day for withdrawals of candidature.

96. The Assistant Commissioner of Savanur has his permanent headquarters as Savanur, but for election purposes, he had set up his temporary headquarters, at the Taluk Office of Shiggaon between the dates of 13th and 23rd of January 1967. Out of these, 13th, 14th and 15th were holidays. He actually started residing there from the 16th.

97. In his evidence he has given detailed information about the receipt of nomination papers and the putting up of various notices as required by the relevant rules. According to his evidence he received the nomination papers of the 1st petitioner on the 19th and the 1st respondent on the 20th. Ex. R. 23 is one of the two nomination papers produced before him by the 1st petitioner and R. 24 another

paper produced by him. They were received by him at 12-40 and 12-55 p.m. respectively on the 19th.

98. The nomination paper of the 1st respondent Ex.R. 11 was received by him at 2-50 P.M. on the 20th of January 1967. In that form he is required to enter the exact time and date of receipt. His endorsement on the form noting 2-50 P.M. to be the exact time of receipt, is expressly spoken to by him and is separately marked R. 11 (c), He has stated that a certified extract from the electoral roll of Chitradurga Ex. R. 12 was delivered to him along with R. 11, and that he made a note thereon reading:

"Received on 20th January 67." marked separately R. 12 (c). He has stated that a sum of Rs 250 being the deposit was handed over to him in cash by Hanumanchagouda Patil immediately he came into his Office and that he sent the same into the Sub-Treasury the same day. The Sub-Treasury is located in the same compound as that of the Taluk Office. Ex. R. 25 is the treasury challan signed by him. He has not only signed it as Returning Officer, Shiggaon, but also described himself by the said official designation in the column intended for entering the name of the person making the deposit.

99. On the 20th of January 1967, he put up on his notice board a notice Ex. R. 26 setting out the programme of scrutiny of nomination papers fixed for the following day the 21st, according to which it was notified that the papers will be taken up for scrutiny Constituency-wise in the following order, *viz.*, Shirahatti, Kundgol and Shiggaon.

100. On the 21st of January, according to his evidence, he reached his Office at about 5 minutes before 11-00 A.M After making preliminary arrangements for the work of scrutiny, he commenced the scrutiny of the papers of Shirahatti at about 11-30 A.M. and finished it by about 1-00 P.M. Then he took his meals which occupied him about half-an-hour. At 1-30 P.M. he commenced the the scrutiny of the nomination papers of Kundgol which was completed at about 2-30 P.M. He states that during

the scrutiny of the papers of Shirahatti, some objections were raised for the nomination paper of one of the candidates, but was later not pressed. There was similarly an objection to the nomination paper of one of the candidates of Kundgol Constituency which also after some discussion was not pressed.

101. He commenced the scrutiny of Shiggaon papers at about 2-30 or 2-35 P.M. he asked the candidates to inspect the papers if they wanted. He then states:

> "When the candidates were looking into the papers, the 1st respondent came into my office. He said that he wanted to subscribe to the affirmation. I was till then sitting below the dias. When the 1st respondent expressed his desire to make an affirmation, I led him to the dias. Then I handed over to him Form No. 7-A which is the prescribed text of affirmation. He read it aloud and signed it in my presence. I endorsed thereon "affirmed and subscribed before me" and signed the same. Ex. R. 13 in the text of the affirmation subscribed by the 1st respondent. The endorsement referred to above is Ex. R. 13 a)".

Thereafter, he states that he read out the names of the candidates mentioned in the nomination papers calling for objections, if any. Nobody having raised any objection, he accepted all the nomination papers and prepared and caused to be put up on the notice board a list of validly nominated candidates in form No. 4 both in English and in Kanada, Ex. R. 9 and R. 10.

102. He states expressly that at the time of the scrutiny all the nine candidates including the 1st petitioner and the 1st respondent were present.

103. Immediately thereafter, all the candidates except 1st respondent came to him and presented their notices of withdrawal. When they so presented the forms, he asked

each one of them whether he was withdrawing his nomination and after receiving his reply in the affirmative and after satisfying himself about his identity and genuineness of his signature, he made on each of the papers an endorsement of the time of receipt. Regarding the notice of withdrawal presented by the 1st petitioner, this is what he states:

> "Ex. P. 8. is the notice of withdrawal of the 1st petitioner Khanjekanaver, presented by him. The manuscript writing is English in the portion of the Exhibit separately marked Ex. P. 8 (c) is mine. In the said portion it is noted that 'this notice was delivered to me at my office at 3.28 P. M. on 21st January 1967 by Shri Khajekhanaver Khaderkshan the candidate".

104. After giving to each of the candidates an acknowledgement for the withdrawal form presented by him, he published a notice of withdrawals of candidature in form No. 6 on his notice board both in English and in Kannada, Exhibits R. 27 and R. 28.

105. After 3.00 P. M. on 23rd January 1967, the last date and time for withdrawals, he published a list of contesting candidates in form No. 7-A both in English and in Kannada, Exhibits R. 29 and R. 30. The only name mentioned therein is of the 1st respondent.

106. At about 3.15 P. M. on the 23rd, he formally declared the 1st respondent as returned unopposed. Ex. R. 33 is the declaration. Ex. R. 34 is his return made in form No. 21.

107. He admits receipt of Exhibits P. 3 and R. 8. purporting to have been sent by the 1st petitioner. Ex. P. 3 according to the endorsement, made by him, was received by him at 7-20 P. M. on 22nd January 1967. He endorsed thereon that since it was a telegram, it would not be acted upon. Ex. R. 8 was received by him at 3.00 P. M. on 23rd

January 1967 and he made an endorsement thereon to the following effect :

> "It is also a telegram. Nothing can be done on this. Besides, he presented his withdrawal application in person after the scrutiny of all the nomination papers. Valid withdrawal cannot be revoked. File."

108. He has further stated that according to the instructions given to him, he was not only sending copies of the notices of nomination put up by him on his office notice board, but also sending telegrams to the District Election Officer. Ex. R. 43 is the telegram sent by him to the District Election Officer on the 19th of January giving the names of all persons who had filed nominations in all the Constituencies for which he was the Returning Officer. Ex. R. 44 is the similar telegram of 20th of January 1967.

109. On the 23rd of January 1967, the 2nd respondent had occasion to see the District Election Officer at Dharwar. He did so at about 8.00 P. M. that night. According to him, he had to discuss with him details of the polling in the Constituencies of Shirahatti and Kundgol. He further states that he took the opportunity to inform the District Election Officer of the fact of his having received the telegrams Exhibit P. 3 and R. 8

110. On the 24th morning, he saw a news item in the issue of the Samyukta Karnataka dated 24th of January 1967. The issue is Ex. P. 15 and the news item appears on the 1st page thereon. Two portions of that report separately marked Ex. P. 15 (*a*) and (*b*) state that one of the candidates at Siggaon had raised an objection that the nomination paper of the 1st respondent had been filed beyond time, and that the 1st petitioner had informed the Returning Officer in writing that his withdrawal of his candidature had been secured by the exercise of pressure. The 2nd respondent states that he thought it necessary to have this news item contradicted by the publication of a clarification press note. Accordingly,

he wrote a detailed letter to the Election Officer that day setting out what according to him was the true state of affairs and seeking permission to publish a clarificatory press note. Ex. R. 37 is the original of that letter produced by the District Election Officer. Ex. R. 37-A is the office copy thereof retained by the 2nd respondent and produced by him into Court. Ex. R. 38 is the draft of the press note which he proposed to get published. The District Election Officer by his reply Ex. R. 40 dated the 31st of January, told the 2nd respondent that he might himself take steps to get the press note published. This letter was received by him on the 3rd of February. On the 4th, he sent the note to the Editor of the Samyukta Karnataka with a covering letter, the office copy whereof is Ex. R. 41. The note was published in the issue of the Samyukta Karnataka dated the 7th of February 1967. Ex. P. 19 (a) is the said Publication.

111. Foregoing is a summary of all the material facts deposed to by the 2nd respondent. The consideration of answers elicited from him in the course of the cross-examination on behalf of the petitioners can more conveniently be taken up along with the examination of the several attacks made against his *bona fides* and the credibility of his evidence.

112. Although very serious allegations have been made against him and it has been attempted on behalf of the petitioners to make out that he had at all material times completely permitted his sense of official duty to be over-powered by his interestedness in the 1st respondent, the petitioners have made no attempt whatever to lead any direct evidence in support of these serious allegations. The entire case is sought to be built upon what are described as necessary inferences from proved facts.

113. Facts which may be regarded as completely proved or admitted are only just about half a dozen or less in number. The 2nd respondent happened to be the Returning Officer both at the bye-election from Bagalkot in

May 1962 as well as in the General Elections of 1967 in Shiggaon Constituency. At both these elections, the 1st respondent was returned unopposed. The second respondent was first posted as the Assistant Commissioner of Bagalkot in May 1961 about one year before the bye-election. He was posted as the Assistant Commissioner of Savanur Sub-Division, of which Shiggaon is part, in December 1965, about one year before the elections of 1967.

114. Upon these facts, it is suggested that the posting of the 2nd respondent at these places about a year prior to the respective elections was specially motivated. The argument sought to be developed on this basis is that before he became Returning Officer, he was also functioning as the Electoral Registration Officer, and that therefore, his working as such was likely to furnish him with opportunities to come into contact with important members of the electorate so that he may utilise these contacts for the furtherance of the prospects of the election of the 1st respondent.

115. Now the facts stated above are more accurately the admitted or proved facts are not in themselves sufficient to charge the nd respondent with any *mala fides*. The real case is that he was specially posted at these places so that he may so manoeuvre things as to bring about an uncontested return of the 1st respondent. The argument that he was posted at the respective places one year before the date of the election so that he may contact the electorate is really destructive of the first argument, as longstanding contact with the electorate will be a matter of value only if a poll was going to be taken.

116. The petition in sub-paragraph (*b*) of paragraph III expressly states that at the Bagalkot bye-election, the 2nd respondent has so shaped things as to enable the 1st respondent to get returned uncontested. The evidence of the 1st petitioner himself on this point is that sometime during the 1st week of March 1967 when he was travelling in a bus some passengers with whom he was not acquainted, told him that the 2nd respondent had worked or functioned

as the Returning Officer at the bye-election at Bagalkot in May 1962 and that he had manoeuvred things so as to bring about an uncontested return of the 1st respondent. The 1st petitioner in his evidence distinctly states that he merely heard this passenger relating these things and did not even make further enquiries with him, because he was not acquainted with him. Evidence of this type which may rightly be described as double or treble hearsay is of no real value whatever.

117. Quite apart from this weakness in the oral evidence tendered by the 1st petitioner, there is an intrinsic improbability in the suggestion that the 2nd respondent had been posted to Bagalkot sub-divison in May 1961 with a view to get the 1st respondent returned uncontested in May 1962. It should be remembered that at the General Elections of 1962, the 1st respondent stood as a candidate from Hosadurga Constituency and that he got defeated at the election. It is impossible to suggest that before the election, he was interested in attending to anything but activities which might tend to support his election at Hosadurga. Even the bye-election was made possible because, after the defeat of the 1st respondent from Hosadurga Constituency; the official Congress candidate who had got returned from Bagalkot resigned his seat in the Legislature with a view to make room for the 1st respondent. If such were the position upon facts, it is impossible to hold or even suggest that the bye-election at Bagalkot in the month of May 1962 was at all in the contemplation of anybody much less the 1st respondent before defeat in Hosadurga.

118. Further suggestions have been made in the course of the cross-examination of both the 2nd respondent as well as Mahalinga Shetty that Patil Puttappa and Mahalinga Shetty had gone to Bagalkot during the bye-election of May 1962. This is a new suggestion developed for the first time in the course of evidence and of course both the 2nd respondent as well as Mahalinga Shetty have rejected the suggestion.

119. Another argument sought to be developed in support of the same theory is that when the 2nd respondent was working as the Assistant Commissioner of Bagalkot, he had collected large amounts of gold for the National Defence Fund and that a ceremony called the 'Tulabhara Ceremony' was organised in Bijapur at which Mrs. Indira Gandhi and the 1st respondent are said to have been weighed against gold. The 2nd respondent admitted that he was present at the function as the Assistant Commissioner. He also admitted that the amount of gold collected by him in the division was higher than what had been collected by anybody else in that division. Assuming all these facts to be true, I fail to understand how the facts can at all support a suggestion that he had developed either then or at any time earlier a special intimacy with the 1st respondent, or that the 1st respondent had selected him for bestowing upon him special affection of favour or favourtism. It is a matter of common knowledge that for the purpose of making collections for the National Defence Fund, not only the members of the public but also officers of the Government were devoting special attention. It was also perhaps one of the items in the publicity programmes of the Government that persons considered to be important either in the State or Indian politics should be made the central figures of ceremonies and functions of the type described above. I do not think that any inference of the type suggested on behalf of the petitioners can be drawn from these circumstances.

120 As to the present elections, there is not even hearsay evidence on behalf of the petitioners The entire case is built upon suggestions made to witnesses which have been rejected by them and inferences and argument suggested which it is now my duty to discuss.

121 Questioned about his impressions about the 2nd respondent's attitude towards him in the course of the

cross-examination on behalf of the 2nd respondent, the 1st petitioner deposed as follows :

> " Till 20th January 1967, there was no sort of illwill between me and the 2nd respondent. Whenever he saw me, he spoke to me normally. I could not infer either illwill or affection for me from his manner of talking of behavior. "

122. Pressed further during the course of the cross-examination, he stated :

> " I do not attribute to the 2nd respondent any act or activity not expressly attributed to him in my petition. "

123. Neverthless three witnesses on behalf of the petitioners had attributed to him vast activities far beyond the scope of the allegations contained in the petition.

124. P. W. 1 Hanumanthasa is one of them.

P. W. 3 Chaman Sab and P. W. 4 Mohd. Jafar are the other set of witnesses who did likewise.

125. P. W. 1 Hanumanthasa was summoned on behalf of the petitioners to produce the negatives of two photographs said to have been taken by him on the evening of 21st January 1967 in which the 1st and the 2nd respondents appear. He came to Court without the negatives and deposed that one Abdul Khader Bhudusab Dakani, a clerk working in the office of the Block Development Officer Shiggaon, took away the negative from him on the 22nd June 1967 stating that the Prant—Officer the 2nd respondent, the Mamlatdar and the Block Development Officer wanted those negatives, and that when after receipt of summons he went to the said Dakani to get back the negatives, he refused to return them. He further deposed that it was the same Dakani who had come to him with a request of the 2nd respondent to go over to his Office and photograph him in the company of the 1st respondent on the 21st of January 1967. The 2nd respondent has of course denied these suggestions.

126. It will be seen that the point of the evidence as so deposed to was not that on the 21st of January 1967 P. W. 1 Hanumanthasa had taken a photograph of the respondents, but that with the trial in prospect the 2nd respondent had taken special steps to deprive the witness of the custody of the negatives which he had been summoned to produce on behalf of the petitioners. The case obviously sought to be built upon this was that the 2nd respondent who was interested in the 1st respondent getting elected was also anxious to see that the petitioners are deprived of the evidence necessary for this trial.

127. But the use which Mr. B. S. Patil, the learned counsel for the petitioners, wanted to make of this evidence was that the 2nd respondent was so closely associated with the 1st respondent that he had arranged to get himself photographed in his company so that he may retain the photograph as a memento. If that was all that was intended to be achieved by this evidence, nothing more was necessary than to produce those two photographs which are actually produced by this witness and to show that both the 1st respondent and the 2nd respondent are clearly recognisable in those photographs. Assuming for a moment that the 2nd respondent did have such a weakness to get himself photographed in the company of an important person, I do not think that his conduct calls for any special comment because he is not the only person subject to such weakness. There are many people who think that they achieve importance by getting themselves photographed in the company of more important persons. That will, therefore, furnish no sound basis for inferring anything so sinister as the petitioners want to attribute to the 2nd respondent.

128. P. Ws. 3 and 4 have attributed to the 2nd respondent activities beyond the scope of the petition, which I shall presently point out were perhaps beyond the contemplation of not only the petitioners, but even their counsel.

129. The said two witnesses, it will be remembered, deposed that on Friday the 20th of January, sometime after sunset one Ghundusab came to fetch them at the instance of the 2nd respondent and that at the Office of the 2nd respondent, the 2nd respondent himself stated persuading Jafar to get the 1st petitioner withdraw his nomination. It would mean that even in regard to corrupt practice said to have been committed through the agency of Patil Puttappa and others, the 2nd respondent was being assigned a certain part. Apart from the absence of any reference to this material fact in the petition, the positive evidence of the 1st petitioner that he did not attribute to the 2nd respondent anything which has not been expressly attributed to him in the petition would itself be sufficient to discard this evidence as unacceptable.

130. Apparently in view of this obvious weakness in the evidence, Mr. B. S. Patil, the learned counsel for the petitioners, expressly told me in the course of the arguments that he was not going to place any reliance on this part of the evidence of P.Ws 3 and 4 and that it was not a part of his case that so far as the corrupt practices of bribery or undue influences are concerned, the 2nd respondent had any particular part. Indeed, in the course of the arguments, Mr. Patil said that even in the case of Patil Puttappa it may be that at that point of time he did not have any intention intention to expert or expectation of having to exert any pressure on the 1st petitioner. If so, the petitioners cannot attribute any motive or special desire to the 2nd respondent to allow himself to be utilised for the purpose of commission of any corrupt practice.

131. Coming now to express statements in the petition against the 2nd respondent, it will be best to refer to sub-paragraph (k) of paragraph III of the petition. That is the sub-paragraph in which is formulated a charge of corrupt practice of procuring the assistance of the 2nd respondent. The particulars thereof according to the said sub-paragraph are those already set out in sub-paragraphs (a), (b), (c), (d), (e), (f), (g) and (h).

132. Sub-paragraph(s) contains nothing but a statement that there were only eight candidates excluding the 1st respondent and that on the withdrawal of the seven of them, the 1st petitioner ought to have been declared elected.

133. Sub-paragraph (b) is one in which the special bond of interest between the respondent is set out and the 2nd respondent is charged having manoeuvred matters at the bye-election of Baglkot. I have already dealt with that Sub-paragraphs (c),(d),(e),(f) and (g) deal with the petitioners' case regarding the absence of or infirmities in the nomination paper said to have been presented on behalf of the 1st respondent. So far as this is concerned, the only statement of any charge or complaint against the 2nd respondent is the general statement contained in sub-paragraph (g) that in the circumstances stated, the nomination of the 1st respondent must be taken to have been manoeuvred or manipulated or ushered in. Although I shall have to say more about Exhibits P. 3 and R. 8 later, it is enough to state at this stage that neither of them make any mention of either the absence or invalidity of the nomination paper of the 1st respondent and neither of them attributes any *mala fides* or even irregular conduct to the 2nd respondent. Even Ex. R. 8 in which the word fraud is used, the suggestion in the context clearly is that the fraud had been committed not by the 2nd respondent, but by somebody else and by asking the 2nd respondent not to be a party to the fraud he was merely being warned not to be a victim of fraud.

Sub-Paragraph (h) reads as follows:

> "The stage of scrutiny was never reached for want of any nomination paper of respondent No. 1 and hence the state of withdrawal supposed to have left respondent No. 1 alone in the field is automatically unrelated to facts. The non-compliance with the requirements of the symbol establishes the same position."

I shall deal with the question of symbol at a later stage. The rest of the sub-paragraph contains no special allegation

against the 2nd respondent. It is only a summary of the case of the petitioners regarding the nomination paper of the 1st respondent.

134. The next argument in support of the case of *mala fides* is directly related to Ex. R. 8, and may therefore be taken up for consideration at this stage itself.

135. The argument is that in view of the allegations contained in Exhibits P. 3 and R. 8, it became the duty of the 2nd respondent to hold a summary enquiry under sub-section 3 of section 37. That section deals with withdrawal or candidature.

Sub-section 3 reads:

> "The returing Officer shall, on being statisfied as to the genuineness of a notice of withdrawal and the identity of the person delivering it under sub-section (1), cause the notice to be affixed in some conspicuous place in his office."

The corresponding rule in the Conduct of Elections Rules, in Rule No. 9. Sub-rule 1 thereof prescribes a form for the notice of withdrawal and enjoins upon the Returning Officer the duty of making a note on the form of the exact time of its presentation. Sub-rule 2 says that the notice under Sub-section 3 of Section 37 shall be in form No. 6. Form No. 6 is the form prescribed for exhibiting information about withdrawals of candidature delivered to the Returning Officer. In this case, the 2nd respondent has deposed that after satisfying himself about the particulars mentioned in Sub-section 3 of Section 37 he had put up notices in form No. 6 in both Kannada and English and produced his office copies thereof as Exhibits R. 27 and R. 28.

136. *Prima facie*, therefore, if his evidence is to be accepted, he had, according to him, completed his function of enquiry under sub-section 3 of Section 37 before putting up Exhibits R. 27 and R. 28.

137. Nevertheless, the argument is that in *view* of the decision of the Madhya Pradesh High Court reported in XV E.L.R. 467, RAMAKANT KESHEORAO *Vs.* BHIKULAL LAXMICHAND, the Returning Officer had the power to revise his opinion until he comes to put up the list of contesting candidates under Section 38 of the Act.

138. A reading of the case in the light of the previous ruling of the Supreme Court in NATWAR LAL *Vs.* BHARTENDRA SINGH, V E. L. R. 408 shows that the argument so presented cannot be accepted. In NATWAR LAL's case, Their Lordships have clearly pointed out that in the matter of scrutiny of nomination papers, the Returning Officer discharges or exercises as quasi-judicial function and that once he comes to a judicial decision on the matter, he has no right to review the same because the power of review has to be specially conferred upon authorities other than the ordinary courts. The Madhya Pradesh High Court referring to the said decision of the Supreme Court states that the stage of completed judicial decision is reached when a list of validly nominated candidates is put up after completion of the scrutiny. In the case before them, the Returning Officer had accepted the nomination paper of a candidate in respect of a parliamentary Constituency and later discovered while scrutinising the nomination paper of the candidate relating to an Assembly Constituency that he was disqualified and immediately took up the previous paper and rejected that also as invalid. But, he did this before putting up the list of validly nominated candidates. It may be a question of some nicety and difficulty whether the stage of a completed judicial decision is not reached when the Returning Officer endorses his acceptance or rejection on the nomination paper in question or is postponed till he puts up the relevant list under the Rules. But even assuming that it is permissible to postpone the stage till the putting up of the relevant notice, such a stage had in fact been reached in this case. Before receipt of Ex: P. 3 he had already put up the list of withdrawals in form No. 6. Those lists were put up on the 21st evening. Ex. P. 3 was received by him on the 22nd evening.

139. Even as a matter of fact the allegation in Exhibits P. 3 and R. 8 was that the 1st petitioner himself had not personally presented the withdrawal, the further suggestion being that somebody might have presented a withdrawal form making out that he is authorised by him to do so. According to the evidence of the 2nd respondent the withdrawal was presented not by an authorised person, but by the 1st petitioner himself personally.

140. Therefore, there was no question of fact which remained to be examined by him. As a matter of law, he was precluded from reviewing the position having put up the notices Exhibits R. 27 and R 28. what is more, under sub-section 2 of Section 37 it is not open to a candidate who has withdrawn his candidature to cancel his withdrawal subsequently.

141. That is the *view* on facts and law set out by the 2nd respondent in his endorsement on the reverse of Ex. R. 8 (b) which I have already copied.

142. Hence, if he acted on that *view* of the law and facts, the highest that the petitioners could do is to argue that that *view* is wrong. I do not think it is open to construct a theory that because he dealt with Ex. R. 8 that way, he must necessarily be charged with having been inspired by special interest in the 1st respondent.

143. Next line of argument is that with a view to assist the 1st respondent, the 2nd respondent and deliberately departed from well-known provisions of law and the relevant Rules. As the matter appeared to me of some considerable importance from the point of view of the argument pressed on behalf of the petitioners, I requested Mr. Patil to give me a list of instances in which from time to time the 2nd respondent had made such deliberate departures from the law or the rules. He formulated four such instances.

144. The first of them is that though section 36 of the R P. Act prohibits adjournments of scrutiny procedings,

and the 2nd respondent had deliberately postponed or adjourned the scrutiny of papers relating to Shiggaon Constituency till 2-30 P.M. in the afternoon to enable the 1st respondent to come and subscribe to the affirmation which he had not done previously. It is further stated that while dealing with the alleged objections to the nomination paper of one of the candidates in Shirahatti and Kundgol, he had not reduced the objections to writing nor written out his order thereon. This, it is stated, is a disobedience of the law which requires that whenever objections are taken, the Returning Officer should hear the parties and determine them and make a written order accepting or rejecting the same.

145. Whether in the circumstances deposed to by the 2nd respondent he should have made a written record of the objections raised during the scrutiny of the papers of Shirahatti and Kundgol, is not a matter which, in my opinion, is of direct relevance of Shiggaon Constituency. The only manner in which the 2nd respondent is said to have assisted the 1st respondent is that on the pretext that there were objections to be examined in the case of Shirahatti and Kundgol, he had unnecessarily taken up time. If that was his objective, I think he could have spent more time by writing out long orders. Apart from that, there is no other point so far as the examination of Shirahatti and Kundgol papers is concerned.

146. The posting of the scrutiny of Shiggaon papers to the afternoon or as the third in the order of priority is described by Mr. Patil as an adjournment in contravention of sub section(5)of Section 36, which says that the Returning Officer shall hold the scrutiny on the date appointed and shall not allow any adjournment of the proceedings except when such proceedings are interrupted or obstructed by a riot or by violence or by causes beyond his control. The ordinary meaning of the provisions would be to compel or oblige the Officer to hold the scrutiny on the date specified therefore with a view to see that the calendar of events, which is set out by the Statute itself in Section 30, and

not left to be prescribed by anybody else, is not as far as possible disturbed. Further, the scrutiny dealt with by sub-section(5) of section 36 is obviously the scrutiny relating to a single Constituency. To say that when a Returning Officer has to deal with more Constituencies than one, he adjourns the proceedings for scrutiny of a certain Constituency by reason only of the fact that he takes up the scrutiny of the papers of that Constituency next after the scrutiny of the papers relating to another Constituency, would be to reduce the law to an absurdity. When the scrutiny is actually commenced, it may be that interruption thereof except for causes beyond the control of the officer as set out in the section may be an irregularity.

147. No such situation has arisen in this case. The 2nd respondent was the Returning Officer, as already stated, for three Constituencies. He had on the previous day *i.e.*, the 20th, made up a programme for scrutiny and posted it on his notice board. According to his evidence, he did so at about 12.00 NOON. There is no evidence on record nor even a suggestion made to any witness that the 2nd respondent knew or must be taken to have known even at 12 O'Clock on the 20th that the 1st respondent was expected to present his nomination paper that afternoon. Nor is there any evidence to show that on the 21st anybody on behalf of or in the interest of the 1st respondent requested the 2nd respondent to delay matters so as to enable the 1st respondent to come and subscribe to the affirmation. Indeed, the argument of Mr. Patil was, if anybody had made such a request or if the 2nd respondent himself in view of the non-arrival of the 1st respondent waited for him for some reasonable length of the time, he would not have charged the 2nd respondent with *mala fides*.

148. On the whole, it appears to me that except suspicions suggested without any real basis in evidence or proved circumstances, no inference of any *mala fides* is possible from the fixation of the programme of scrutiny by the 2nd respondent. In the absence of any acceptable

evidence it has to be taken that the settlement of the programme of scrutiny by the 2nd respondent especially when it had been done at time when he may not even be said to have been aware of the 1st respondent or anyone on his behalf thinking of presenting a nomination paper of his, must be regarded as natural conduct on his part.

149. The second instance of departure from the law stated by Mr. Patil was that in spite of the fact that subsection 2 of Section 53 says that the result of the election in the absence of contest, should be declared forthwith, the 2nd respondent had delayed the declaration under section 53(2) till the 23rd of January, instead of doing it on the 21st itself, when after the withdrawal of eight others, the 1st respondent alone remained in the field. The 2nd respondent was questioned on this point and he stated that according to his view of the law, the word 'forthwith' in Section 53(2) meant immediately after the expiry of the time fixed for withdrawal of nomination papers. The view of the law appears to be correct and Mr. Patil himself conceded that it was correct to wait till the last moment fixed for withdrawal of candidature before declaring the results. Even in cases where after withdrawals of candidature at an earlier point of time, only one candidate may be left, it is still open to that one candidate to withdraw. Hence, even according to the arguments on behalf of the petitioners, as subsequently corrected, there is no departure made by the 2nd respondent from any provision of law as understood by him. Even otherwise, it appears to me that it would have been more in the interest of the 1st respondent than otherwise, to publish the results on the 21st itself rather than to wait till 23rd. Apparently the point was given up because if pressed further, it would work against the argument rather than support it.

150. The third instance of departure from the rules has relation to allotment of election symbols. Now under Rule 10(1) of the Conduct of Elections Rules, allotment of a symbol becomes necessary only when a poll has to be taken. But, in this case, in the list of contesting candi-

dates Exhibits R. 29 and R. 30 the 2nd respondent, in the 3rd column thereof, has shown the Congress election symbol as the symbol allotted to the 1st respondent. In the course of the cross-examination of the 2nd respondent, it was elicited on behalf of the petitioners that he had not made any written order allotting the symbol to the 1st respondent before putting up Exhibits R. 29 and R. 30. If so, the entry in the relevant column of the list of a description of the election symbol would mean nothing more than the columns were filled in a routine way without any special attention having paid to the need or otherwise of allotment of a symbol, and the fact that he made no written order allotting the symbol shows that the 2nd respondent did not consider that the stage of allotment under Rule 10(4) of the Conduct of Elections Rules had arrived.

151. If this is all that has to be said on this matter, it would not have called for any further discussion. But, the 2nd respondent has been cross-examined at great length on this point especially in regard to two Exhibits R. 31 and R. 32. One of them is a telegram and the other a letter which confirms the telegram and states some more facts. Both were addressed by the President of the Mysore Pradesh Congress Committee to the 2nd respondent. The substance of the communications is that although G. C. Patil had been originally held out as an official candidate of the Congress at the Shiggaon Constituency, the Congress party had in supersession of that decision finally selected the 1st respondent as the official candidate of the Congress at Shiggaon. The communications are dated 21st January. The evidence of the 2nd respondent is that he received them on the following day the 22nd January. So far as the letter Ex. R. 31 itself is concerned, he says that it did not come to him by post, but was actually delivered to him in person. Pressed further to state or give the name of the messenger who brought it, he recollected his name and stated that he was a person called Nijaguli. The cross-examination was further pursued and an attempt was made to ascertain whether the letter had been entered in any register maintained in the office, and concluded with the

suggestion that the 2nd respondent had deliberately destroyed the cover in which the letter was received with a view to be able to say that the letter had been delivered to him personally and not sent by post.

152. If, as already stated, the position taken up on behalf of the petitioners is that no symbol at all need even be allotted because the election was an uncontested one, I fail to see any point in the subsequent cross-examination. Apparently the original idea of making a reference to the symbol in sub-paragraph (h) of a paragraph III of the petition was that the 1st respondent who had taken a fright for elections after his defeat at Hosadurga, was anxious to see whether in this constituency he can easily get returned uncontested. Because it so happened that the 1st respondent or his friends did not take sufficient care to present the papers and take all steps necessary in the good time, they have exposed themselves or their case to an argument of inferences and suggestions based on delay, possibilities of doing or not doing certain necessary things, etc. The 1st respondent was cross-examined at some length on the question whether he had the permission of the M.P.C.C. or the Central Parliamentary Board to change his Constituency having selected him as the official candidate for Bagalkot constituency. He, however, answered that although the Parliamentary Board is the final authority for settling the list of official candidates, he as the leader of the Mysore Congress Legislature party had the discretion in the company of the President of the M.P.C.C. to change the Constituencies. He was asked whether there was any evidence in support of this to which he replied that the same was a convention and the fact that they have so changed the Constituencies during all the last four General Elections was itself sufficient evidence of it. He also produced information about the changes in Constituencies gathered from the registers maintained by the M.P.C.C. and presented in a tabulated form (Exhibits R. 15 and R. 16).

153. Taken at the highest, any irregularity in the matter of getting himself substituted for another Congress

candidate already selected by the M.P.C.C. as their official candidates, would be a matter entirely for the party. The Returning Officer is not to any extent interested in it. The question would arise only in regard to the allotment of symbols reserved for multi-state parties. According to the conventions developed by the Election Commission, the multi-state parties are required to file with Chief Electoral Officer the final list of official candidates. They are permitted to have one more substitute candidate who is expected to withdraw if the nomination of the principal official candidate is accepted. If he does not, the party loses the benefit of the symbol reserved for it and the Returning Officer is free to decline to allot that symbol and leave the candidates a choice from other free symbols. It is also clear from the instructions issued by the Election Commission which appear in the 1966 Edition of the Handbook for Returning Officers at page 33, that the multi-state parties are permitted to change their selections provided that such changes are made before 3.00 P.M. of the last date for the withdrawal of candidature.

154. It follows, therefore, that even to the extent to which the Returning Officer may be interested as such Returning Officer in the selection of an official candidate by multi-state party like the Congress, the actual state of affairs in this case does not appear to constitute any such startling departure from the procedure or practice generally followed.

155. The fourth and the last instance of the alleged departure from the law is, permitting the first respondent to subscribe to his affirmation under Article 173 (*a*) of the Constitution on the 21st January 1967, a day after the presentation of his nomination paper. The Returning Officer was cross-examined on the legal position. It was elicited from him that he knew that the subscribing to affirmation is a qualification prescribed by the Constitution in its 173rd Article and that as a Returning Officer he had the duty of satisfying himself even at the presentation of the nomination paper that the persons sought to be nominated is *prima facie* qualified. On

these two answers a further suggestion was put to him that the affirmation to be proper and lawful or legally valid should have been subscribed to before or at any rate simultaneously with the presentation of the nomination. He did not accept this suggestion. He stated that according to his view of the law for which he derived support from sub-section (2) of section 36 of the Representation of the People Act it was sufficient that the affirmation was subscribed to before the relevant nomination paper is taken up for scrutiny.

156. The question whether this view of the law is correct, I shall consider at a later stage. For the present or at this stage the question is whether the second respondent knowing the law and being aware of the correct position of law has departed therefrom with a view to assist the first respondent.

157. Now, sub-section (2) of section 36 of the Representation of the People Act, 1951, as amended, states that the Returning Officer should reject a nomination paper if on the date fixed for scrutiny the person sought to be nominated is not qualified to fill a seat in an appropriate legislature according to any of the provisions therein mentioned including Article 173 of the Constitution. I may also add that the Election Commission in their Hand-Book of the Returning Officer mentioned above has given certain detailed instructions in regard to this matter which are found at pages 17 to 20 in the course of which they state at page 19 that the oath or affirmation should be made and subscribed, before the Returning Officer takes up the scrutiny of nomination papers at the election on the date fixed for scrutiny and also state that if the oath or affirmation is not made and subscribed before the scrutiny of a candidate's nomination paper the Returning Officer will have to hold that the said candidate is not qualified to stand for election.

158. In view of this it would be clear that, whether or not the legal position so stated is correct, the second respondent was acting on a certain view of the law which

seems to derive some support from the relevant instructions issued by the Election Commission themselves.

159. In that view it is impossible to argue that he had made any deliberate departure from a settled or known position of law with a view to assist the first respondent.

160. Apart from what has already been discussed the severest attack on the evidence of the second respondent and his *bona fides* was developed out of his report to the District Election Officer Exhibit R-37.

161. As already stated by me, Ex. R. 37 is the original of the letter sent to the District Election Officer. That paper had been summoned from the District Election Officer and was available in Court having been produced by him. Nevertheless the second respondent thought fit to produce an office copy thereof maintained by him which had still remained in his custody. That was produced and marked as Ex. R-37 (A). It happens that these two documents differ in one small particular. In paragraph 3 thereof there is a portion of the sentence reading " X X X when the scrutiny of three other candidates was going on X X X". In the original Exhibit R-37 the word 'three' is found scored off in ink but it has remained undisturbed in the copy Exhibit R 37 (A). But no questions were put to the second Respondent when he was in the box in spite of the fact that considerable time was occupied by his cross-examination relating to this matter, either seeking an explanation for this difference or making any suggestions to him based on or developed out of this apparent difference. Obviously for that reason there was no re-examination on this point by his own counsel. But in the course of arguments some point was sought to be made on behalf of the petitioners. I record that I refused permission to make any point out of this because it would be unfair to a witness to raise a point and argue against him, without seeking his explanation on a document which was available to the Counsel and which has been dealt with in detail in the course of cross-examination. It also appears to me that from the point of

view of the petitioners case the text of Exhibit R-37 (A) is perhaps better suited to the development of a theory than the text of Exhibit R-37 where the word 'three' stands scored out. However, I need not say anything on that matter because I have declined permission to address any arguments on this point.

162. As already stated, both Exhibit R-37 and Exhibit R-37 (A) were marked in the course of examination-in-chief. In the course of cross-examination the petitioners' Counsel took care to first obtain from the witness the answer,

"The facts stated in the letter are true to my knowledge."

As this answer was elicited from the witness when Exhibit R-37 (A) was put in his hands and not Exhibit R-37, I took care to make a note that the document shown to the witness was Exhibit R-37 (A).

163. I may now quote the first two sentence in para 3 of Exhibit R-37 (A) which were utilised in the course of cross-examination. They read.

> "There were 9 candidates for Shiggaon Constituency; when scrutiny of three other candidates was going on 21st January 1967, the Chief Minister came and he immediately took the affirmation and signed it. After this I proceeded with the scrutiny of other candidates and finishing it I took that of the Chief Minister, Shri S. Nijalingappa."

Reading out this sentence to the witness, he was asked, "I put it to you that this represents the true state of affairs?" His answer was, "That is not correct. What I meant is that the scrutiny of the three candidates was going on, but was not completed." Cross-examination of the witness was further pursued. The witness was not able to state the names of the three candidates mentioned in the sentence. It wase licited from him that normal procedure was to examine or scrutinise the papers according to their serial number. Witness then explained himself by stating, "The reference in the first two sentences of para 3 of Exhibit R-37 (A) is

to preliminary scrutiny of the papers before I took up the regular scrutiny in the presence of the candidates." It was next put to him whether by preliminary scrutiny he did not mean the examination of nomination paper upon presentation as contemplated by sub-section (4) of Section 33 of the Representation of the People Act. Obviously realising the difficulty into which he has landed himself he has expressed himself by explaining, "I used the words 'preliminary scrutiny' to indicate or to emphasise that the stage contemplated by Section 36 has not arrived". Some time later it was put to him that the sentences extracted above meant or gave the impression that the scrutiny of as many as 5 nomination papers had been completed and at the time the first respondent arrived there papers of three candidates excluding the first respondent. His answer was, "That is not what I meant."

164. Now, the value of this questioning is that in the course of his examination-in-chief the second respondent had stated that:

> "When the Candidates were looking into the papers, the first respondent came into my office."

G. C. Patil (R.W. 2) had earlier stated in his evidence that the first respondent entered the office when the Returning Officer was in the act of perusing the papers

165. The difficulty of reconciling this is obvious. When the evidence of G. C. Patil himself would make one think that the stage of inspection of documents by the candidates had passed and the Second respondent had started looking into the papers, which would mean the stage of Section 36 had commenced, the second respondent himself in his answer mentioned above had suggested in his chief examination that the papers had not reached his hands but that the inspection of the papers of the candidates was still in progress before the first respondent arrived. The two sentences in para 3 of Exhibit R-37 (A), although they did not mean according to the witness, what the cross-examining Counsel put to him, *viz.*, the papers of 5 candidates had already been scrutinized, he did say that what he

meant was that the scrutiny of the three candidates was going on but was not completed.

166. Now, the argument very strongly pressed on the basis of these apparently irreconcilable answers is that because the first respondent and his witnesses and the second respondent also had apparently acted on the view of the law that it was sufficient to take the affirmation at a point of time immediately proceeding the commencement of the scrutiny of his nomination paper, they became shaken in their view of the law by the express legal contentions raised and sought to be developed by the petitioners and that therefore both the second respondent as well as other witness for the first respondent were trying to wriggle out of the factual situation as described in the first two sentences of paragraph 3 of Exhibit R-37 (A). It was argued that whatever may be the value one may attach to the oral evidence now tendered before the Court, it was impossible for the second respondent to say that what is stated in Exhibit R-37 or Exhibit R-37 (A) is not accurate or that the true state of affairs or an accurate statement of the facts as they took place or the events as they occurred was not found in a statement like Exhibit R-37 (A) made very shortly after the events described and in the light of the certain allegedly inaccurate statements made in a news item in the Samyukta Karnataka of the 24th January.

167. Having arrived at this proposition, the next argument is that the second respondent has permitted himself to make a deliberately false statement when he said that the first respondent came into his office when the candidates were looking into the papers.

168. A distinction should now be made between the approach to be made by me to this matter for the purpose of recording a finding of fact as to the exact point of time when the first respondent subscribed to his affirmation and for assessing the value of the attacks made against the *bona fides* of the second respondent.

169. Now, from the point of view of the law or the legal contentions raised by the first petitioner, his case is that an affirmation under Article should be enterior in point of time to the nomination, while the case or the answer on behalf of the first respondent to this contention is that such is not the requirement of the law but that according to the amended clause (a) of sub-section (2) of Section 36 of the Representation of the People Act, 1951 the qualification under Article 173 or its existence or non-existence has to be ascertained as on the date fixed for the scrutiny. As, however, the nomination paper is liable to be rejected if the person nominated had not made on oath or affirmation as required by Article 173, the ultimate result according to the case on behalf of the first respondent is that when the Returning Officer takes up the nomination paper of a candidate for scrutiny, the candidate may ask him to administer the affirmation and then proceed to scrutinize the paper.

170. If such is the case of the first respondent in answer to the case pressed on behalf of the petitioners, it becomes clear that this is immaterial to the development of his case whether the affirmation is taken or administered before the scrutiny of any paper in Shiggaon Constituency is taken up or the affirmation or cath is taken or administered just before the nomination paper of the first respondent is taken up for surutiny. If such is the consequence of the legal stand taken up by or on behalf of the first respondent it may not be necessary for anyone, much less the second respondent to depart from what he has stated in the first two sentences of paragraph 3 of Exhibit R-37 (A) even for the purpose of supporting the case of the first respondent.

171. What G. C. Patil has said as to the point of time at which the first respondent had entered the office of respondent 2 is not to be taken into account for assessing the *bona-fides* of the second respondent. Second respondent's *bona-fides* are attacked on the ground that having taken a particular stand or having reduced to writing a statement of facts in Exhibit R-37 in one way he has tried

to depart from it in his evidence before Court with a view to assist the first respondent, without regard to the question whether his answers in Court were accurate or true.

172. One circumstance which has been conveniently ignored in developing this argument is that not only Exhibit R-37 but also Exhibit R-37 (A) were produced and marked and spoken to in the course of the examination in chief of the second respondent. Indeed, as I have already stated, it was quite unnecessary for the second respondent to have at all produced Exhibit R-37 (A) when at his instance or at the instance of the first respondent the original of Exhibit R-37 had been brought before court in answer to a summons issued to the District Election Officer. Nevertheless he had produced it and taken the risk of being cross-examined on the striking out of the word 'three'. Whether he was aware of it prior to the examination or not, he must certainly be expected to have looked into both Exhibit R-37 and Exhibit R-37 (A) when his Counsel put them into his hands for the purpose of marking them as exhibits. If he had failed to do so or if Exhibit R-37 had not been put to him in the course of his examination-in-chief and the cross-examining Counsel for the first time put it to him in the course of cross-examination the argument would have had better force. In answer to one of my questions as to whether in putting certain questions to contradict the witness he was not obliged to observe the conditions prescribed in section 145 of the Evidence Act, he claimed a right to be absolved of the restrictions of section 145 on the ground that the paper having marked in examination-in-chief and the witness having admitted that the document contains a true statement of facts it became a part of the chief examination of the witness and he was not obliged thereafter to comply with section 145 of the Evidence Act, but that it was up to the second respondent's Counsel to bring on record any explanation in the course of re-examination.

173. It would seem therefore that the contradiction is not between an answer given in examination-in-chief and

an answer elicited or forced from the witness in the course of the cross-examination.

174. What more, the entire basis for this very strongly pressed argument has been removed by the cross-examination itself. Two passages from the written statement of the second respondent were put to him and he was asked whether those statements were correct or not. The second respondent without any hesitation answered that the said statements were correct. Those statements are, the second sentence in sub-para (d) and the last sentence in sub-para (g) of para 1 of his written statement. To understand the context of the same it is necessary to quote the first two sentences of sub-para (d).

They are:

"1 (d): It is denied that the first respondent did not solemnly affirm in accordance with law before the second respondent. He did do so on 21st January 1967 before the scrutiny of his nomination paper for Shiggaon Constituency."

The last sentence in sub-para (g) reads as follows:

" 1 (g): When the nomination papers of Shiggaon Constituency were taken up for scrutiny and before the nomination paper of respondent 1 was taken up for scrutiny, he appeared and took the necessary oath as prescribed by law well in time and it was scrutinised and accepted."

175. It will be seen from these statements that they are entirely in accord with the position set out in Exhibit R-37 (A). What they mean actually in law is a different matter or what consequence it may lead to is a different matter. But, the essence of the matter is that both in the matter of filing his written statement as well as when he was closely cross-examined in the witness box the second respondent had not made any different version from what had already been stated in Exhibit R-37.

176. If indeed he had been put wise about the possible legal consequence of para 3 of Exhibit R-37 (A) he would not have been so unwise as to state in the course of his examination that the first respondent came in when the candidates were looking into the papers without qualifying or explaining it fully. The mere fact that he said that the sentences in para 3 of Exhibit R-37(A) did not mean what Mr. Patil read into them does not mean that the second respondent may be described as a person who says something in a report to a superior, meaning something else and comes to Court and deposes to a third meaning.

177. There appears to be some confusion in the mind of the second respondent as to the exact meaning of the scrutiny in section 36 and about there being or existing in law a stage which may be described as 'preliminary scrutiny'. If so, it is too much to suggest that he has such keen legal acumen as to realise the legal consequence of one fact as different from the legal consequence of another fact and then make up his mind to shape the facts to accord with the law as understood by him or with a legal position which in his opinion might support the case which the first respondent is pressing before this court.

178. I am therefore clearly of the opinion that whatever may be my finding as to the factual position or my opinion as to the legal consequence of the said facts, it is quite uncharitable to attack the second respondent's *bona fides* in the manner it has been done on the basis of the cross-examination on Exhibit R-37 (A) or to impute to a man not fully conversant with law a type of intellectual dishonesty which he appears to be incapable of in the state of his knowledge.

179. There is only one other matter to be considered under the topic of the *bona-fides* and *mala-fides* of the second respondent.

180. In publishing the contradiction or the clarificatory statement Ex. R-3 the second respondent had

deposed that he was moved by the fact of certain inaccurate statements in the news item Exhibits P-15 (a) and P-15 (b) in the Samyukta Karanataka of 24th January 1967. But, while writing to the District Election Officer about this matter in Exhibit R-37 he has stated :

> "These items in the newspapers of 23rd and 24th January 1967 are likely to throw reflection on me."

Because he has mentioned the date as 23rd also he was asked whether he had not read the news item in Vishala Karnataka of 23rd January 1967, Exhibit R-6. That issue, as already stated contains certain extracts from the speech said to have been delivered by the first petitioner in Durgada Bail on the night of 22nd January. It also contains a full translation in Kannada of the telegram Exhibit P-3. The witness denied having read that news. He explained that the date 23rd was a clerical mistake and that if one reads the earlier portion of his lett r, the reference to news items could only be to the news items which appeared in the issues of Samyukta Karnataka dated the 22nd and 24th January 1967. He was at once asked what was wrong or objectionable in the news item of 22nd. That issue is Exhibit R-2. The witness answered that the inaccuracy in the statement was or consisted in the impression created by the news item that the first respondent himself presented his nomination paper on the 20th January, whereas it was presented not by him but on his behalf by his proposer, H. A. Patil.

181. The argument based on these answers was that the witness having read the news item in Vishala Karnataka of 23rd January was falsely deposing that he had not read it. The argument in support of this suggestion is that if there was any provocation for publishing a contradiction or a clerificatory note like Exhibit R-38, such provocation may be said to arise naturally out of the more virulent statements made in Exhibit R-6 than what may be described as merely inaccurate statements in Exhibit R-2 and Exhibit P-15. The argument is statable. But the point of it is removed

by further cross-examination in which it was elicited from the second respondent that he considered Exhibits R-2 and P-15 contained not merely inaccurate statements but deliberate falsehood. The witness may possibly have read Exhibit R-6 after writing Exhibit R-37, but that is not sufficient to hold that he has uttered a falsehood when he said that it was not Ex. R-6 which persuaded him to publish a contradiction Exhibit R-38. Even assuming that at least out of curiosity a person in the position of the second respondent might have read the Vishala Karnataka of the 23rd some time subsequently, I do not think that he could add any strength to the case of the first respondent by deposing falsely that he has never read Ex. R-6. Even taken at the highest the case of the petitioners does not go the length of saying that the second respondent was trying to cover up some wrong or illegal act on his part by saying that he had not read the Vishala Karnataka of 23rd January. Indeed if one reads that news item, there is no attack against the second respondent at all. The attack in the news item, the attack in the speech of the first respondent is all against the first respondent and the attack in Exhibit P-3 is against Patil Puttappa.

182. I decline to place therefore any value on this suggestion that in stating that he had not read the issue of Vishala Karnataka of 23rd January the second respondent must be held to have uttered a lie trying thereby to add any strength to the case of the first respondent.

183. On a close and detailed examination of all the attacks made against the *bona fides* of the second respondent I feel satisfied that there is no substance in any one of them.

184. I therefore consider that it could be safe to proceed on the basis that on material particulars the evidence of the second respondent is substantially true.

185. I shall now proceed to examine the issues one by one.

186. The first issue has two parts.

The first part deals with the factum of the presentation of the first respondent's nomination paper and the second part with certain alleged infirmities.

187. On the first part, there is no direct evidence by or on behalf of the petitioners. A-11 that the first petitioner has to say is that the first respondent's case of having filed his nomination papers is false and that he says so because when he went at about 3-30 in the afternoon of 20th January to the Office of the Returning Officer he did not see the name of the first respondent there in the list. Some attempt was made on behalf of the second respondent to ascertain that list it was that the petitioner had seen on the 20th January. He was shown Exhibits R-9 and R-10, the English and Kannada versions of the list of validly nominated candidates dated the 21st January 1967. The first petitioner gave not quite clear answers. He pleaded his inability to read the English list. Regarding the list in Kannada he appeared to say that he had actually seen it, but tried later to tone down the answer. Even after I read out the transcript to him, he said that he had said something more than what had already been recorded. I therefore recorded that answer at the end. On the whole it is quite unsafe for me to draw an inference on the basis of these answers. Assuming therefore that the first petitioner had gone to the Office of the Returning Officer at about 3-30 P. M. on the 20th January, 1967 and that in a list that he saw on the notice board the name of the first respondent did not appear, the fact would be inconclusive and therefore incapable of yielding any firm inference one way or the other.

188 On the other side on behalf of the first respondent there is firstly the positive evidence of his own witnesses G. C. Patil and Hanumantlagouda A. Patil of the

presentation of the nomination paper. According to both of them, they were in the Office of the Returning Officer on the 20th at or about 2-30 in the afternoon and after attending to the preliminaries and incidental matters they presented the nomination before 3 O'clock. The positive evidence of the second respondent is also in favour of the first respondent having presented the nomination paper. I have already referred to the endorsement made by the second respondent Exhibit R-11(c) on the nomiation Exhibit R-11 to the effect that the same had been presented to him at 2.50 P. M. on the 20th January.

189. The reason why the first petitioner is not in a position to give any better evidence than what he has on this point appears to me to be that his entire case of a total absence of a nomination paper is all probability, an afterthought.

190. The first time he committed himself to writing was in Exhibit P-3 the telegram drafted for him by P.W. 2 Mr. Shettar. In that telegram while stating all that he had to say about his own withdrawal of his candidature he had omitted to make any reference to the case now strongly pressed on his behalf that the first respondent had not even filed any nomination paper. In the several references to this case in his petition I found some difficulty in deciding whether there was a positive statement of fact or positive averment of fact that there had not been any presentation at all or the case was one of late presentation especially in view of the statement in sub-para (g) of Paragraph III of what is described as the ushering in of the nomination paper by manoeuvres and manipulations. I therefore elicited from the Counsel at the time of framing the issue itself whether it was his case that a nomination paper had in fact not been presented and it was after receiving his answer in the affirmative that the first part of the first issue was framed in way it now appears.

191. The second occasion when the first petitioner committed himself to writing was in Exhibit R.8. Here

again, there is no reference to the absence of nomination paper of the first respondent. It has given additional legal colour even to the facts by describing it has fraudulent and making express reference to section 37 of the Representation of the People Act. Nevertheless there is no express reference to the question whether there was or was not a nomination paper actually presented on behalf of the first respondent.

192. It has been argued on behalf of the petitioner that both the telegrams were drafted by lawyers and that therefore I must hold that the lawyers refrained from making any reference to the nomination paper of the first respondent because the second respondent-Returning Officer having purported to accept the same the matter was out of his hands and that therefore there was no point in making him to do anything with reference to that or making a complaint to him in regard to that matter. The lawyers for the petitioner, so far as the evidence goes, cannot be said to have any direct information about the matter. They must have had information either from the first petitioner had no personal knowledge about the matter on his own showing. Therefore both the first petitioner as well as the lawyers must have acquired knowledge or information about facts from the newspapers. If the reference is to the issue of Samyuktha Karnataka of 22nd January 1967, the issue contained the information not only on the fact of there being a nomination paper of the first respondent but also of the completed withdrawal of the other candidates. If so, even from a legal point of view the question of withdrawal also must be taken to be beyond the hands of the second respondent, he having already accepted the same on the assumption that they are genuine and true. Hence even from the point of view of lawyers I do not think that there is an explanation for omitting to make mention of the case about the nomination paper adequate to explain away the respondent's argument that this part of the case is an after-thought.

193. Quite apart from the telegrams, the first petitioner has committed himself further by making a speech on the 22nd January and admitting with some reservations to which I shall refer later that the extracts from the speech published in Vishala Karnataka of the 23rd January, Exhibit R-6, are substantially true. In those extracts the attack is directly against the first respondent and the attack deals only with the withdrawals. If in addition to the alleged malpractice in the matter of getting the other candidates to withdraw their cadidature, the first respondent had not even filed a nomination paper, I do not think that the first petitioner would have failed to make a mention of it in his speech.

194. It is stated in the petition and also by the 1st petitioner in his evidence that when Mr. Shettar P. W. 2 went and saw the District Election Officer at Dharwar on the night of the 22nd January, the 1st petitioner also had gone and seen the said officer and told him of the facts. We do not know what facts he had stated. The 1st petitioner himself has not narrated in his evidence even the substance of the same. Even the fact of his having seen the offices appear to be open to doubt, because Mr. Shettar in his evidence merely states that he went and saw the Deputy Commissioner and that in the course of their conversation, he casually made mention of the telegram, Ex. P-3. His evidence would suggest that he alone went to the office. Hence there is no basis for any argument that the 1st petitioner had either seen the Deputy Commissioner of Dharwar on the 22nd or told him anything about his present case that the 1st respondent had not even presented his nomination paper.

195. In the course of cross-examination on behalf of the second respondent, a series of questions were put to him as to whether he had made any enquiries subsequently at the office of the Returning Officer or the Sub-Treasury about the 1st respondent's nomination paper or whether he had taken any certified copies of the papers said to have been filed by or on behalf of the 1st respondent, to

all of which he replied that whatever enquiries he might have made, they were not made with any of the officers of offices nor had he taken any steps to take out certified copies of the papers said to have been filed by or on behalf of the 1st respondent. In fact, his very general but categorical answer is—

> "In respect of any one of the matters mentioned above covered by the averments in the petition, I have not made any enquiries with any other officer either".

He no doubt tried to explain himself in his re-examination by standing that he refrained from going to the Returning Officer for fear that having already been once duped by him, it was highly likely that he might be drawn into further traps by the officer, an explanation which is very difficult, if not impossible, to accept.

196. In view of this, hardly any value can be attached to the specific averments made by the petitioner in his petition or to the vague evidence given by him that in a certain list which was put up on the Notice Board of the Returning Officer at about 3-30 P.M. on 20th January 1967, he did not see the name of the 1st respondent.

197. That even at the stage of evidence, the 1st petitioner did not have any clear idea of his case on this point is obvious from the various suggestions put to different witnesses examined for the 1st respondent in the course of the cross examination on behalf of the petitioners. It is suggested, for example, in the course of the cross-examination of G. C. Patil that on the afternoon of the 20th January Mahalingashetty received at his house in Hubli a telephonic message from the Personal Assistant of the 1st respondent from Hospet that there was difficulty in securing uncontested return from the Hadagali Constituency and that therefore attempts may be made in that direction at the Shiggaon Constituency. But when Mahalingashetty was in the box, the suggestion put to him was that discovering at the time of the presentation of the nomination paper

that there was not available a certified extract from the Electoral Roll from Chitradurga. Mahalingashetty went to Chitradurga to fetch one copy and that by the time he returned, time for presenting the nomination paper had already expired. When the 1st respondent was in the box, a question was put to him in the nature of suggestion on the basis of Entry No. 37 in Ex. R-14 (a page from the Register of Deposits and Receipts maintained by the sub-treasury, Shiggaon) that the 1st respondent himself must have personally presented his nomination paper for Kundagol Constituency. Apart from the fact that any such suggestion will be of little value in the absence of the writer of the Exhibit as a witness to explain what he meant by those entries, the suggestion that the 1st respondent himself presented the Kundagol nomination paper necessarily involves the suggestion that the 1st respondent had gone to the office of the 2nd respondent who was the Returning Officer for the Kundagol Constituency also and that therefore he might have himself presented his nomination paper for the Shiggaon Constituency as well. Indeed, in answer to a question by me that is what exactly Mr. Patil told me. According to his theory, the evidence of overtaking the 1st respondent's car before Haveri is a pretence and the 1st respondent himself must have gone direct to Shiggaon on the 20th to present his nomination paper. It is enough to say that this argument is wholly destructive of the express statement made in the petition that the 1st respondent had not gone to Shiggaon at all until the entire day of 20th January had expired.

198. In view of all these infirmities in the evidence or such as may be disiribed as evidence on behalf of the 1st petitioner, there appears to be no reason to discard the positive evidence of the 2nd respondent that the nomination paper Ex. R. 11 of the 1st respondent was presented or delivered to him on the 20th by H. A. Patil at 2-50 P. M., corroborated as it is by contemporaneous entry Ex R-11 (c), putting up of the notices Ex. R-21 and 22 and the despatch of the telegram Ex. R-44 by him to the District Election Officer.

199. The three infirmities set out in the second part of the issue are (1) the non-availability or non-production of the certified extract from the Chitradurga Electoral Roll, (2) non-payment of deposit under section 34 and (3) the alleged insufficiency in law of the affirmation under Article 173 of the Constitution.

200. Ex. R-12 the extract from the Chitradurga Electoral Roll was, according to the evidence of G. C. Patil, H. A. Patil and the 2nd respondent, delivered to the 2nd respondent along with Ex. R-11. But the case of the petitioners is that no such copy was ever produced. When such a copy was actually produced in court and marked through the 1st respondent and later shown to and proved by other witnesses also, the attempt was to make out that it was defective. The defects pointed out in the course of the cross-examination of the 1st respondent were that there were certain overwritings in the endorsement of the dates set out in the copy. The date of application, for example, appears to have been originally written as 1st July 1967 and lateracorrected as 7th January 1967 The date of delivery of the copy appears to have been originally written as 7th January 1967 but later corrected to 9th January 1967. When these overwritings were brought to the notice of the 1st respondent, he admitted that they appear to be overwritten. But when the 2nd respondent was asked the same question, he was quite clear in his mind and stated that he did not find anything suspicious about these overwritings. Apparently he has seen many of his clerks striking and writing over again. At any rate, his suspicion was not excited, and what is more, he stated that the fact of the same having been received along with Ex. R-11 is obvious from the endorsement made on Ex. R-12 that it was received on 20th January 1967. The endorsement is marked Ex. R-12 (c). Any doubt in this matter gets removed by the fact that on the two Court-fee labels affixed to the copy, the date has been clearly written as 7th January 1967.

201. Another line of argument pursued by Mr. Patil with regard to Ex. R-12 was that there was something

suspicious in the copy having been in the custody of Mahalingashetty when G. C. Patil and others went to him on 19th January 1967. The suspicion was sought to be heightened by the cross-examination. Mahalingashetty stated that one Aragavi Basappa had given it to him about 4 or 5 days before the 19th with the request to send it to the Personal Assistant of the 1st respondent, from whom he Aragavi Basappa had originally obtained the same to produce it along with an intended nomination paper in Bailhongal. The question whether and if so, in what manner, Mahalingashetty came into possession of this paper is really of no consequence whatever. What is material is that the paper was available and had in fact been presented to the 2nd respondent along with Ex. R-11. That such a paper did exist is clear. That it had been produced from the custody of the District Election Officer is beyond dispute. That the District Election Officer could not have had possession of it but for the fact that the Returning Officer under rules had sent it along with the election papers to him and that the Returning Officer would not have got into possession of it except as an accompaniment to Ex. R-11 is also clear.

22. The payment of deposit is spoken to both by H. A. Patil and by the 2nd respondent. Both of them state that it was paid in cash into the hands of the 2nd respondent. The difference between the two witnesses is that whereas the proposer H. A. Patil says that he handed over the money and the papers to the 2nd respondent probably simultaneously, the 2nd respondent is a little more specific and says that the money was paid to him immediately H. A. Patil came into his office and that was some time before the actual presentation of the paper Ex. R-11. I do not know whether the 2nd respondent is under the impression that the law requires that there must be a hiatus between the payment of money and the presentation of the nomination paper. If the rules permit a proposer or a candidate to make the deposit either in a treasury or in the Reserve Bank before the presentation of nomination paper to the Returning Officer or in cash directly into the hands of the

Returning Officer, I do not think there could be said to be any legal infirmity in a simultaneous presentation of money and papers. I am inclined to believe that that is what H. A. Patil did.

203. The 2nd respondent has deposed, that having received cash from H. A. Patil, he himself sent it to the Sub-treasury along with several other payments made to him by other candidates who had presented their nomination papers before him that day not only in regard to the Shiggaon Constituencies with which he was dealing. The relative challan is produced and marked Ex.R-25. The corresponding entry in Ex.R-14 was also shown to him and marked separately as Ex.R-14 (a). Here again, an attempt was made to contradict the 2nd respondent on the basis of a statement of his in Ex.R-37. That statement reads:—

> "Shri Nijalingappa's nomination paper was presented by his proposer H. A. Patil of Shiggaon on 20th January 1967 before 3 P. M., *i. e.*, at 2-50 P. M. after crediting the deposit in the Treasury."

This sentence was read out to the 2nd respondent and he was asked "Does this not mean that H. A. Patil himself credited the money and thereafter he presented the nomination paper to him"? The answer was "I did not mean it that way.". I do not think that it was at all possible for him to mean that way because where the law or the rule permits a party to choose between himself making a deposit at a Government treasury and payment of cash into the hands of a specified officer, there could be little doubt that that person will choose. The second alternative, because going to treasury, entering the challan, waiting at the counter, etc., is a time-consuming process which people would like to avoid if they could. Secondly, in Ex.R-25 about the genuineness of which no doubt whatever has been cast or even suggested, the 2nd respondent has not only signed it as the Returning Officer of Shiggaon but also described himself with the same official designation in the column meant for entering the name of the person making the deposit.

204. Certain questions were directed towards the possible or probable time at which the money reached the treasury. It is seen that Ex. R-11 was presented at 2-50 P.M. Money has to be deposited in a Government treasury before 3 P.M. An attempt was made to show that time was too short to make the deposit. The answer was that the said treasury is located in the same compound, if not the same building, as the Taluk Office. There could be no difficulty, especially when the money is sent by an officer like the Returning Officer, in the money reaching the treasury before 3 P.M.

205. Hence, neither in regard to the production of Ex. R-12 along with Ex. R-11 nor in regard to the fact of deposit having been made within time, is there any reason to discard the evidence of the 2nd Respondent.

206. There remains the question of the affirmation for purposes of Article 173.

207. The first point is the exact point of time when the affirmation was made. The second point is whether the requirements of law have been duly complied with.

208. On the first point, I have already stated every things while discussing the cross-examination of the 2nd respondent with reference to or on the basis of Ex. R-37-A.

209. So far as the oral evidence on the point is concerned, it is not of much assistance in fixing the point of time. Every one of the witness including the 1st respondent, merely gives an approximate time. He states that he arrived at the office of the Returning Officer at about 2-30 P.M. and that the people waiting there then told him that the scrutiny of the nomination papers of the Shiggaon Constituency had just been taken up. Manalingashetty would have us believe that it was he who rushed to the car of the last respondent and urged him to go into the oce ffi though the 1st respondent himself did not appear to be in

much hurry because he witnessed a guard of honour by the police. G. C. Patil states that at about 2-30 P.M., the Returning Officer sent for the candidates of the Shiggaon Constituency to be present at the scrutiny of the nomination papers of that Constituency. According to him, the 1st respondent arrived there when the 2nd respondent was in the act of perusing the papers. The answers of the 2nd respondent and their value in the light of Ex. R-37-A, I have already discussed.

210. In view of the difficulty so created by the conflicting or at any rate, not easily reconcilable oral evidence, it appears to me that the safest thing is to proceed on the basis that what is stated in Ex. R-37-A is probably nearest the actual position.

211. Even there, there is the difficulty created by what the 2nd respondent has described as preliminary scrutiny. Although he stated that by that he wanted to emphasise the fact that the stage contemplated by Section 36 had not yet arrived, I should hesitate to act on that answer because he did not appear to the quite sure about the legal position or quite clear about the operation of Section 36 of the Representation of the People Act or the exact legal meaning to be given go the word 'Scrutiny' there.

212. But, one thing may be taken as fully within the knowledge of the Returning Officer both on the basis of the section as well as on the basis of the Handbook of instructions issued by the Election Commission, and that is, he is bound in the first instance to give inspection of all the papers to all the candidates and then proceed to scrutinise paper by paper in serial order.

213. I therefore take it that the first thing that he did when he started the work of scrutinising the papers of Shiggaon Constituency was to invite the candidates to inspect the papers. It is highly unlikely that the candidates would have declined inspection or not looked into

papers at all. Therefore some time might have been taken by the inspection and some time thereafter by the Returning Officer for rearranging the papers.

214. When the Returning Officer in Ex. R-37-A says that the scrutiny of some papers was going on when the 1st respondent arrived, it cannot be said that he meant inspection by the candidates. It was his own act of looking into papers and his only purpose of looking into papers was the scrutiny under Section 36. If so, it becomes clear that the arrival of the 1st respondent in the office of the Returning Officer must have been some time subsequent to the actual commencement of the scrutiny by the Returning Officer, that is to say, after he took up the first paper for scrutiny with a view to make a decision to accept or reject it.

215. At the same time, it is clear that he had not taken up the nomination paper of the 1st respondent for such scrutiny before his arrival, because even according to Ex. R-37 the Returning Officer did scrutinise some nomination papers presented by candidates other than the 1st respondent after administering the affirmation to the 1st respondent. That is exactly what he has stated in the last sentence of sub-paragraph (g) of paragraph I of his written statement. That sentence was read out to him in the course of his cross-examination and he has destinctly stated that it states the correct position.

216. I therefore find that although the scrutiny of the nomination papers of the Shiggaon Constituency had commenced before the 1st respondent arrived at his office, he, the 2nd respondent, administered the affirmation to the 1st respondent before taking up the 1st respondent's nomination paper for scrutiny.

217. The legal position now to be discussed is whether the petitioners are right in their contention that the affirmation should have been subscribed to before or simultaneously with the presentation of the nomination paper

paper OR the 1st respondent is right in his contention that provisions of Article 173 *a* m y be said to have been fully complied with if he makes affirmation at a point of time just or even immediate y before the commencement of the scrutiny of his nomination paper.

218. The relevant portion of Article 173 reads :—

> "A person shall not be qual fied t> be chosen to fill a seat in the legislature of State unless he—
>
> (*a*) is a citizen of India, and m kes and subscribes before some pers n au horised in that behalf by the Election C mmissiou an oath or affirmation according to the form set out for the purpose in the Third Schedule."

The form is VII-A or VII-B, A being the form for use by a candidate before election and B by a member after election. Form VII-A reads as follows :—

> "I, A B., having been nominated as a candidate to fill a seat in the Legislative Assembly or Legislative C uncil, do swear in the name of God/solemnly affirm that I will bear true faith and allegiance to the C nstitution of India as by law established and that I will uphold the sovereignty and integrity of India".

219. The person before whom oath or affirmation may be made has to be a person authorised by the Election Commission. On 2nd January 1965 the C mmission issued two Notifications specifying the person so authorised by him,—one in relation to parliament and the other in relation to State Legislatures. They consolidated both of them by a fresh Notification issued on 25th April 1967. In both the principal person authorised is the Returning Officer of the constituency in question. I set out below the full text of the Notification No. 3/130 65/2, dated 2nd January

1965, first issued in relation to election to State Legislatures:—

"In pusuance of clause (*a*) of Article 173 of the Constitution, and in supersession of its notification No. 3/150/63 2), dated the 15th November, 1963, the Election Commission hereby directs—

(*a*) that a candidate for election to the Legislature of a State by an assembly constituency or a council constituency, shall make and subscribe the oath or affirmation, according to the form set out for the purpose in the Third Schedule to the Constitution before the returning Officer or an Assistant Returning Officer for that constituency; and

(*b*) that a candidate for election to fill a seat or seats in the Legislative Council of a State by the members of the Legislative Assembly of the State, shall make and subscribe the said oath or affirmation before the Returning Officer or the Assistant Returning Officer for that election:

Provided that if any such candidate is at the time confined in a prison or under preventive detention, he may make and subscribe the said oath or affirmation before the Superintendent of the Prison or Commandant of the detention camp in which he is so confined or under such detention."

220. Now, two things follow from the form set out in the Third Schedule to the Constitution and the Notification of the Election Commission specifying the authorised person. According to the form, the occasion for taking affirmation is subsequent to nomination, because the form says 'having been nominated'. Unless a candidate is in prison or preventive detention, the only person before whom he can make affirmation is the Returning Officer of the Constituency from which he is a candidate for election to the State Legislature.

221. The next question for consideration is at what point of time a person can be said to have been nominated as a candidate. The relevant provisions are Sections 32 and 33. The former reads :—

"32. Nomination of Candidates For Election.—

Any person may be nominated as a candidate for election to fill a seat if he is qualified to be chosen to fill that seat under the provisions of the Constitution and this Act or under the provisions of the Government of Union Territories Act, 1963, as the case may be."

The relevant portion of the latter reads :—

"33. Presentation of Nomination Paper and Requirements for a Valid Nomination.—

(1) on or before the date appointed under clause (a) of section 30 each candidate shall, either in person or by his proposer, between the hours of eleven o' clock in the forenoon and three o' clock in the afternoon deliver to the Returning Officer at the place specified in this behalf in the notice issued under section 31 a nomination paper completed in the prescribed form and signed by the candidate and by an elector of the constituency as proposer :

Provided that no nomination paper shall be delivered to the Returning Officer on a day which is a public holiday."

222. Now, the argument on behalf of the petitioners is that section 32 deals exhaustively with the question or topic of nomination and that section 33 deals with the ancillary topic of the presentation of a nomination paper. Nomination, according to this argument, is merely an act of naming by the proposer accepted by the person so named. In fact, even the acceptance does not seem to be quite essential for the purpose of the argument. It is stated that the moment a proposer signs his name in the form proposing

a certain person as a candidate for election from a constituency named therein, the nomination of the said person is complete for all purposes of the law. Hence, the nomination having been completed or the person having been nominated, he is bound to make affirmation before presenting the nomination paper. The reason in support of this argument is that the making of an affirmation is a positive qualification itself and that even before the Returning Officer receives a nomination paper, he must be *prima facie* satisfied that a person is qualified to be nominated.

223. The two further questions which arise for testing the acceptability or otherwise of the said argument are—

(1) Whether there could at all be a nomination before a nomination paper is presented to the Returning Officer,

and

(2) What is the date with reference to which the existence or otherwise or possession or otherwise of the qualification is to be ascertained.

224. The argument on behalf of the 1st respondent is that nomination is not mere naming but naming of a person in such a way as to enable him to stand as a candidate for election. Hence what is done under Section 32 is the preparation of a nomination paper for presentation and when the said paper is presented under section 33, the nomination is complete.

225. On the second proposition, the argument on behalf of the 1st respondent is that the amended clause (a) of sub-section (2) of Section 36 makes it clear that the date with reference to which the existence or otherwise of qualification is to be ascertained is the date fixed for the scrutiny of nomination papers. Sub-section (2) of section 36 reads as follows:—

"36 (2) The Returning Officer shall examine the nomination papers and shall decide all objections which may be made to any nomination and may,

either on such objection or on his own motion, after such summary inquiry, if any, as he thinks necessary, reject any nomination on any of the following grounds:—

(*a*) that on the date fixed for the scrutiny of nominations the candidate either is not qualified or is disqualified for being chosen to fill the seat under any of the following provisions that may be applicable, namely:—

Articles 84, 102, 173 and 191, Part II of this act, and sections 4 and 14 of the Government of Union Territories Act, 1963.

OR

(*b*) that there has been a failure to comply with any of the provisions of section 33 or section 34; or

(*c*) that the signature of the candidate or the proposer on the nomination paper is not genuine."

226. There is another aspect of the matter which has also a bearing on the solution of this controversy. Under section 33, a nomination paper can be presented not merely by a candidate but also by a proposer. Hence, the presentation of a nomination paper by a proposer is a good presentation. It will therefore be open to a proposer to present a nomination paper during the last minute of the time fixed for presentation which is three O" Clock in the afternoon on a day not later than the seventh day from the date of of the notification calling for election.

227. Section 33 lays down the general condition of eligibility. It will be noticed that the said section refers only to the qualification of the person to be nominated. But when we come to section 33, what we have is that on or before the date appointed for the receipt of nomination papers, the candidate, either in person or by his proposer, between certain hours, may deliver to the Returning Officer a nomination paper completed in the prescribed

form and signed by the candidate and by an elector of the constituency as proposer. The preliminary examination which the Returning Officer is called upon to undertake before receiving nomination papers is set out in sub-section (4) of Section 33, according to which on the presentation of a nomination paper, he has to satisfy himself that the names and electoral roll numbers of the candidate and the proposer as entered in the nomination paper are the same as those entered in the electoral rolls.

228. The General or basic constitutional provision is that a person shall not be qualified to be chosen to fill a seat in a State Legislature unless he is a citizen and had made the necessary affirmation of allegiance. The question as to the point of time when a person may be so said to be chosen has been a matter of judicial examination and different views had been taken until settled by the Supreme Court. The amendment of clause (a) of sub-section (2) of Section 36 was apparently intended to put an end to the controversy.

229. Although the ultimate destination of candidate is a seat in the Legislature and it is for filling that seat that the Constitution requires that he should possess certain qualifications, the process whereby he reaches that seat proceeds in more stages than one. He has first to be nominated as a candidate; next his nomination paper must pass the scrutiny by the Returning Officer; next he must get elected at the poll if poll is necessary. Finally, his election should survive if an election petition is filed questioning the same.

230. So far as the scrutiny is concerned, the amended clause (a) of sub-section (2) of Section 36 now states that the scrutinising officer should reject a nomination paper if on the date of the scrutiny the candidate nominated does not possess the qualification under Article 173 and other legal provisions mentioned above.

231. In regard to election petitions, Section 100 in clause (a) of sub-section (1) thereof, empowers the High

Court to set aside an election if, in its opinion, the returned candidate was not qualified on the date of his election. The expression 'date of election' is defined in Section 67-A to be the date on which the candidate is declared by the Returning Officer as elected either under Section 53 or under Section 66, as the case may be.

232. In view of these express provisions of the statute regarding the date with reference to which the existence of qualification has to be ascertained, the statement in section. 32 that only a qualified person should be nominated as a candidate must be read as a general statement without reference to any date on which that qualification has to be possessed. But because the nomination under Section 32 is for the purpose of getting elected the candidate nominated, he must satisfy all the provisions of law, the compliance with which is necessary to secure a safe seat in the Legislature. That the ultimate object of all elections is due constitution of Legislatures which means Legislatures whose seats are occupied by qualified persons, is clear from the provisions of Article 327 which authorises Parliament to make by law provision with reference to all matters relating to or connected with elections including the preparation of electoral rolls, the delimitation of constituencies and all other matters necessary for securing the due constitution of Legislative bodies.

233. Hence the specification of time with reference to which the existence or otherwise of a qualification is to be ascertained in a law made by parliament pursuant to Article 327 must be read as supplemental to and not in a manner in derogation of Article 173.

234. Once that position is reached, it appears to me that so far as the powers of the Returning Officer to accept or reject nomination papers are concerned, he is bound to examine the existence or otherwise of qualifications under Article 173, only on the date fixed for the scrutiny of nomination papers.

235. Apart from the express language used in the said clause, as now amended, the provisions of Section 33 and the operation of the Election Commission's specification of authorised persons for the purpose of Article 173 *a*) make it difficult to accept the contention pressed on behalf of the petitioners.

236. If, as I have stated, Section 32 requires that the person to be nominated must be one who has necessary qualification but makes no mention of the date on which such qualification should be ascertained and if Section 33 permits a proposer to present a nomination paper right up to the last minute of the time fixed for the presentation of nomination papers, then it is clear that the law does insist upon the candidate to make affirmation before the presentation of the nomination paper. Excluding the cases covered by the proviso, *viz.*, the candidates in prison or under preventive detention, the normal rule is that the only officer who can administer oath or affirmation is the Returning Officer or the Assistant Returning Officer of the constituency for or in respect of which a person is nominated as a candidate. Hence the swearing officer and the officer to whom a nomination paper has to be delivered is the same. If a candidate has to make affirmation even before the presentation of his nomination paper, then, the provision authorising a proposer to present a nomination paper becomes nugatory.

237. I am also not impressed by the argument that nomination is complete the moment the proposer signs the nomination paper nominating a particular person as a candidate. Nomination as I have stated, is naming of a person as a candidate for election, and no one becomes a candidate for election until the nomination reaches the Returning Officer. Prior thereto, he is for the purposes of law described only as a prospective candidate, *i.e.*, a person who with election in prospect holds himself out as a candidate.

238. Although he need not therefore make affirmation before the actual presentation of the nomination paper he cannot postpone it indefinitely because he cannot stand for election unless his nomination paper is accepted as valid by the Returning Officer. The validity or invalidity of it is determined by the scrutiny under section 36 of the Representation of the People Act. Hence he should possess the qualification under Article 173 on the date fixed for scrutiny. Although the date fixed for scrutiny may extend up to the midnight of that day because his paper can be rejected on the ground that he had not made the affirmation, he is obliged to make the affirmation before the Returning Officer has the opportunity of rejecting his paper. No rejection is possible by him except after an examination of the paper and the existence or otherwise of the prescribed qualifications of the candidate. If therefore before the Officer takes up a candidate's nomination paper for scrutiny the candidate takes care first to ask him to administer affirmation to him, the officer by virtue of the authorisation under the Notification of the Election Commission is bound to comply with his request, and once the affirmation is completed, the candidate must be held to be qualified or at any rate not disqualified for lack of affirmation.

239. Another line of argument pursued by Mr. Patil on behalf of the petitioners on the basis of the ruling 10 E.L.R. 41 (RATTAN ANMOL SINGH v ATMA RAM) is that at the time of the scrutiny, all that a candidate is permitted to do is to adduce evidence on the question of the existence or otherwise of the qualification and not take steps to acquire that qualification if he did not possess that qualification at the time he was nominated.

240. The point considered there was the validity or invalidity of a nomination paper in which the proposer was illiterate and made a mark instead of writing out his name by way of signature. The said mark was not attested by any one. After examining all the provisions of the Act and the relevant rules, their Lordships held that in the absence of an attestation, the mark was ineffective and did

not answer the meaning which the statute assigned to the word "subscribing". Having held that way, their Lordships stated the second proportion, *viz.*, that the infirmity or irregularity was not capable of being cured by an attestation at the time of the scrutiny, in the following terms:—

> "The next question is whether the attestation can be completed by the persons concerned at the scrutiny stage. It must be accepted that no attempt was made at the presentation stage to satisfy the Returning Officer about the identity of these persons but evidence was led to show that this was attempted at the scrutiny stage. The Returning Officer denies this, but even if the identities could have been proved to his satisfaction at that stage it would have been too late because the attestation and the satisfaction must exist at the presentation and the satisfaction must exist at the presentation stage and a total omission of such an essential feature cannot be subsequently validated any more than the omission of the candidate to sign at all would have been. Section 36 is mandatory and enjoins the Returning Officer to refuse any nomination when there has been 'any failure to comply with any of the provisions of Section 33....'".

241. The above extract from the judgment of their Lordships makes it perfectly clear that they were dealing with clause (b) of sub-section (2) of Section 36. The compliance with the provisions of Sections 33 and 34 has obviously to be anterior in point of time or at any rate contemporaneous with the presentation. Section 34 dealing with deposits expressly states that a candidate shall not be deemed to be duly nominated for election from a constituency unless he deposits or causes to be deposited the sum specified therein. Therefore, that is a provision of law which has got to be complied with for a valid nomination. He cannot be nominated at all unless he makes the deposit.

Section 33 refers to the necessity of signatures by the proposer and the candidate in a prescribed form. Obviously that is a matter to be attended to or observed before or at any rate at the time of the presentation. Above all, the amendment, which specifies the date for fixed for scrutiny as the relevant date, is limited to clause (a) of sub-section (2) of Section 36, and there is no reference to the dates in either of the clauses (b) and c). The reason is obvious. The dates for purposes of clauses (b) and (c) are capable of being ascertained by a reference to other sections of the Act. The date with reference to which the existence of a qualification has to be ascertained was a subject of difference of opinion and was settled by the Legislature amending clause (a).

242. Even with regard to the amendment, Mr. Patil suggested that the selection of the words 'the date fixed for the scrutiny' which are different from the words 'at the time of scrutiny' used in sub-section (5) of Section 33 must be regarded as indicative of some difference in meaning. Now, sub-section (5) of Section 33 states that where a copy of the electoral roll of a candidate who belongs to another constituency has not been produced along with the nomination paper, it may be produced before the Returning Officer at the time of scrutiny. It is therefore argued by Mr. Patil that the above interpretation which would reduce the expression 'the date fixed for the scrutiny' to 'at the time of scrutiny' may not be correct. The argument is subtle, but the difference in wording, in my opinion makes no difference to the legal position because although the date fixed for scrutiny may extend up to the midnight of the day, the affirmation must have been subscribed to at least before the scrutiny of particular candidate's paper is taken; otherwise it is liable to be rejected.

243. For all these reasons, I record the following finding on issue No. 1 :—

> The petitioners have failed to prove that the nomination paper of the 1st respondent had not been presented at the election in question. On the

contrary, the first respondent has proved that a nomination paper on his behalf had in fact been delivered to the 2nd respondent.

The petitioners have also failed to prove that the nomination paper of the 1st respondent is invalid or inoperative either because it was not accompanied by the relevant portion of the electoral roll in which the name of the 1st respondent appeared, or because the deposit required to be made under Section 34 of the Representation of the people Act had not been made in time or because the affirmation under Article 173(a) of the Constitution had not been made as required by the said Article.

244. Issues 3, 4 and 5 may be taken up together for consideration because the evidence relating to them is common and the finding on issue No. 2 will be consequential upon the finding on issues 3 and 4.

245. I have already summarised the evidence of P.Ws. 3, 4 5 and 6 bearing on these issues, and set out the main features of the petitioners' case sought to be developed on the basis of the said evidence.

246 The evidence, as already stated, falls into two convenient groups, P Ws 3 and 4 speaking to the first part of the transaction and P.Ws 5 and 6 to the second part thereon. I may also note at this stage that there is some similarity between the relationship between the witnesses in each group and their relation with the facts in issue. It will be remembered that P W. 4 Jafar was the only person said to have been sent for by the 2nd respondent Chaman Sab, his friend, happened to be with him at that time and went with him at the request of Jafar and not the 2nd respondent. It will also be seen that he seems to know far less about the elections than what little Jafar himself professes to know. Likewise, the 2nd petitioner–P W. 5, would not have been a witness at all but for the fact that

the 1st petitioner says that he declined to go with Patil Puttappa in the car without the 2nd petitioner also accompanying him.

247. The case sought to be made on the basis of this evidence is that Patil Puttappa having established contact with the 1st petitioner through Jafar tried in the first instance to persuade the 1st petitioner to withdraw his candidature, and later made greater efforts in the direction having taken the petitioners to the house of Hanumanthagouda Patil and ultimately succeeded in securing from the 1st petitioner, under threats his signatures to a printed form and two blank sheets of paper, and that the withdrawal Ex. P. 8 was not presented to the 2nd respondent by the 1st petitioner in person.

248. It will be noticed that the 2nd result of this alleged plan or plot would not have been possible of achievement without some active collaboration or complicity on the part of the 2nd respondent. It is necessary to bear this fact in mind while assessing the value of the evidence.

249. Mr. Patil, the learned counsel for the petitioners, has invited me to assess this evidence in two compartments and has stated it as his strongest argument that so far at any rate as the case of alleged bribery is concerned, to the extent it may be said to depend upon the inducement offered to the 1st petitioner at the road crossing by Patil Puttappa sitting in the car, there is hardly any challenge at all. According to him, so far as this part of the case is concerned, the evidence of Chaman Sab and Jafar Sab has not been shaken.

250. I find it a little difficult to accept the proposition that it will be a correct approach to make to the evidence to split it into parts. There can be no doubt whatever that the entire transaction was one and indivisible. The ultimate object achieved was the securing of the signatures of the 1st petitioner to a blank printed form and two blank

sheets. That, in the light of evidence, could not have been possible without first securing the presence of the 1st petitioner in the house of Hanumathgouda Patil. It would not have been possible to take the 1st petitioner to that house without first establishing contact with him. It would not have been possible to establish such contact without the intervention of Jafar because no other way of establishing such contact is suggested by any evidence or even by any suggestions made to any one of the witnesses. It appears to me, therefore, that any weakness or strength in part of the evidence is likely to reflect itself on the strength of weakness in the other part of the evidence.

251. The argument of Mr. Patil that the evidence of Chaman Sab and Jafar has not been challenged at all or has remained unshaken at least in some part, appears to me to pitch the claims of the petitioner a little too high. The respondents in their cross examination have tried to make that having regard to proved relationship of these witnesses out with the 1st petitioner and their knowledge of the details of the election in respect of which they are deposing as witnesses, their evidence is not of a type which can receive ready acceptance at the hands of the Court.

252. Both the witnesses Chaman Sab and Jafar have admitted that they have had not any previous contact or acquaintance with the 2nd respondent nor have they had any occasion to see him in his official capacity of otherwise. This probabilises to a great extent the evidence of the 2nd respondent that he never knew these two persons. Chaman Sab has plainly admitted that he is not well-to-do man, but one interested in cultivating land taken on lease from somebody else and that he had never interested himself in politics of elections. Indeed, but for the fact that he happened to be in the company of Jafar when Bhudusab came to invite the latter, he would not have had perhaps any occasion to witness any facts relevant to this enquiry or to figure as a witness in this trial. Although, the 1st petitioner in his evidence stated that Jafar was a man of some importance in the locality and that he was one of the

persons who had sponsored his candidature. Jafar himself was more modest and said that he is a man of small importance and he was not one of the more important persons and even among Muslim there are persons who are far more important than himself. Both Chaman Sab and Jafar stated that except that they are residents of the same locality as the one in which the 1st petitioner resides, *viz.*, a street called 'Khajekanavar Galli,' they have no particular intimacy with the 1st petitioner nor were they acquainted with all the details of his affairs.

253. Now the question arises why and on what basis or with what expectations the 2nd respondent could have thought of Jafar to be sent for. If, as already stated, there is nothing to indicate that he had ever known Jafar, the clear probability is that he must have informed himself about Jafar through sombody else. Who that somebody is, it is impossible to gather from the evidence. Jafar himself, it may be remembered, was a little surprised when Ghudusab came to him and said that the Prant Officer wanted to see him. Indeed he asked him a question as to why he was required by the Officer. Ghdusab was not in a position to give a satisfactory reply or any reply at all to this question, If so, Ghudusab was perhaps not the person whom the 2nd respondent may be said to have taken into his confidence for informing himself about the utility of sending for Jafar.

254. It has been argued on behalf of the petitioners that because what was being thought of was not a matter or conduct quite above the board, the probabilites are that men of little or no importance like Jafar would be pitched upon for the purpose. Nevertheless, because it was according to the argument not a matter which could be done openly, it would also be a matter which the persons concerned would be interested in keeping away from the view of the public. If so, they would select a person already known to them and whom may be trusted not to divulge whatever part he had, at their instance, taken in the matter. If so, such trustworthy person to be selected

would have been Ghudusab himself. There is nothing to show why Ghudusab could not have been utilised for establishing contact with the 1st petitioner. It should be remembered in this connection that even according to the arrgument of Mr. Patil, in the first instance even Patil Puttappa could not be credited with an intention to exercise pressure or even to entertain an expectation of his having to exercise pressure With reference to the 2nd respondent the argument was that he was approached by Patil Puttapa for no other purpose than to put him in contact with the 1st petitioner. All this makes it more acceptable to postulate that the best man for the purpose would have been Bhudusab. There is no reason why he was not so selected.

255. There is then the next part of their evidence in which the pointed reference is to the respondent trying to prevail upon Jafar to persuade the 1st petitioner to withdraw his candidature. As I have already stated this part of the evidence was not relied upon even by Mr. Patil. I have also stated why the probabilities are against accepting that evidence. If, so, the 1st link on the basis of which some complicity on the part of the 2nd respondent could have been suggested gets removed.

256. We may not take another important portion of the evidence of these two witnesses, and that is what they say happened at the office of the 2nd respondent on the afternoon of the 21st January. Both of them had gone there, according to their evidence, to see the 1st respondent who was expected to come there. They also state that like them several other persons had gathered at that place to have a look at the 1st respondent. It is then and on that occasion that they say that the 1st respondent sent for them and told them in the presence of the 2nd respondent, Patil Puttappa and Mahalinga Shetty that all that had been promised by Patil Puttappa would be given effect to. It is also their further evidence that the 1st respondent was anxious that they should go and pass on this information to the 1st petitioner.

257. The 2nd respondent has denied the truth of this part of the evidence. There is also some difficulty in believing that the 1st respondent would be so unwise as to create evidence against him. If the case of the 1st petitioner is true, he must have resorted to a corrupt practice with the assistance of Patil Puttappa It is too much to believe that a a candidate in an election who has been a party to the corrupt practice would be a party to a proceeding in which evidence of that corrupt practice will be clearly made available to others.

258. Another aspect of this evidence is that the alleged request by the 1st respondent that these witnesses should go and inform the 1st petitioner that the promises of Patil-Puttappa will be kept, clearly suggests that the 1st petitioner was free and was accessible to them. That is directly in conflict with the positive case of the petitioners that they were in confinement in the house of a Hanumanthigouda Patil from the night of 20th till the small hours of the morning of the 22nd.

259. But what is worse is the further support given to this theory by the witnesses themselves. Chaman Sab said:

> "Then we went to the house of the 1st petitioner and passed on this information to him."

But he corrected himself by saying that the 1st petitioner's mother told him that the 1st petitioner was not in his house. The 2nd answer in correction of the 1st was elicited by a question on behalf of the petitioner:

> "Was he at home? What happened after you went to his house?"

Jafar who was examined later are careful enough to say that when at the request of the 1st respondent he went to the house of the 1st petitioner on the night of 21st, he

did not find him there nor did he meet him after several days thereafter. But in the cross-examination he stated:

> "When on the 2nd day I went to the first petitioner's house, his mother told me that he had taken his food and gone out."

260. Mr. Patil did realise that this was a serious weakness in the evidence of these witnesses. He, however, explained that what the mother of the 1st petitioner is said to have told Chaman Sab and Jafar need not necessarily be regarded as indicating that the 1st petitioner had taken his food in his own house on the night of the 21st. It may be, according to the argument, that he had taken food just before he left on the night of the 20th to go to the shop of his friend the 2nd petitioner. But, in the context of things, it appears to me that the explanation is a little far fetched. The 1st petitioner himself when questioned about this did not say anything more than that his mother might have said so.

261. If, therefore, in the matter of two important features of the case spoken to by these witnesses, their evidence is either destructive of the other case of the petitioner or has not been case of the petitioner or has not been relied upon at all by the petitioner indicating that the witnesses have gone beyond his contemplation in stating his case. It would require considerable persuasion before I can accept the rest of their evidence as reliable.

262. Coming to the next part of the transaction, the evidence being purely oral, a Court would prefer to look for something firmly way of a statement or by way of a piece of conduct on the part of the petitioners which may be relied upon or utilised as a test of the credibility of the oral evidence. There are in this case some such circumstances placed on record and relied upon by the petitioners themselves which may be regarded as fairly safe tests of their evidence. They are the telegrams Exhibits from the

speech said to have been made by the 1st petitioner in Durgada Bail published in Ex. R. 6.

263. I have already had occasion to refer to them while dealing with the 1st issue. While examining them for the present purpose, it is necessary to state that the central feature of this part of the case is the alleged confinement of the petitioners in the house of Hanumanthagouda Patil which totally contradicts the case for the respondents that the withdrawal had been presented to the 2nd respondent personally by the 1st petitioner.

264. There is no mention in Ex. P.3 of any such confinement from the 20th to the 22nd of January. There are no doubt two facts expressly stated, *viz.* that the signature of the 1st petitioner was taken in the house of Hanumanthagouda Patil and that he the 1st petitioner himself had not presented the withdrawal notice. It may be and has been suggested that these two facts expressly stated in Ex. P. 3 necessarily imply that there must have been confinement and that the said confinement must be in the house of Hanumanthagouda Patil. The suggestion looks attractive, but it is necessary to remind ourselves that in actual effect this reverses the process of reasoning. The implication suggested, suggests itself to the mind of any one only in the light of the oral evidence given in Court. But the proper thing to do is not to read Ex. P. 3 in the light of the evidence now tendered in Court, but to test the evidence in the light of Ex. P. 3 which is the earliest statement made by the 1st petitioner after the happening of the events in question. If, therefore, one totally excludes the oral evidence from his mind. I do not think it will be possible to say or assert that any reasonble or firm firm inference of a confinement can be read by implication in Ex. P. 3.

265. Ex. R. 8 also makes no mention of confinement despite the fact that it was sent after further consideration and further legal consultation.

266. The second important link, as I said, *viz*, the inevitability of the complicity of the 2nd respondent to achieve the 2nd result is also not found suggested or stated in either Ex P. 3 of Ex. R 8. Ex. P. 3 itself contains not even words or expressions which might even remotely be regarded as charging the 2nd respondent with complicity in the matter. Ex. R. 8 uses the word 'fraud'. But, as already stated, fraudulent conduct is imputed to others and not to the 2nd respondent, and the said word has been chosen by a lawyer after receiving instructions on facts from his client the 1st petitioner. Fraud' has a definite meaning in law which totally excludes the idea of either threats or confinement. Distinguishing feature of fraud is that it is a type of deception completely free from any force, threat or even suggestion of force or threat.

267. Coming now to the speech, there are clear and clearly formulated attacks made against the 1st respondent. One of them is that he had secretly come to Sulegaon and camped there for one whole day to secure the withdrawal of nominations and that he did succeed in that matter. The other is that he had taken the 1st petitioner secretly in a car and he had been obliged to withdraw his candidature as a result of great pressure and threats ( ) In the earlier part of his cross examination, he had made an unequivocal admission that the extracts were substantially correct. But later he corrected himself by stating that the exercise of pressure mentioned should have been described as pressure exercised through Patil Puttappa and that the causing of the withdrawals must have been described as having been so caused through the 2nd respondent. Nevertheless the brunt of the attack or the direct attack is against the 1st respondent himself. Although, therefore, charges of a sufficiently serious nature have been stated in the speech, the speech or at any rate the report of the speech, not to any extent amplified by oral evidence, is singularly devoid of any reference to the confinement in the house of Hanumanthagouda Patil. Dealing with another argument relating to the conduct of the petitioners after their alleged release, Mr. Patil stated

that the state of mind of these young men was one in which they actually felt their blood boiling and that was brought about by the unlawful detention in the house of Hanumanthagouda Patil. If indeed there had been such confinement. I quite agree that people in the position of the petitioners would find their blood boiling. If so, one may ask why did not the pent up emotions find a vent when the 1st petitioner made the speech in Durgad. Bail describing the details of this detention, that prevented the petitioners from telling the public what they have to depose in the witness box. It should be remembered that the evidence is that they were standing on the fringe of the crowd and somebody recognising the 1st petitioner, wanted him to relate all the details of the events that had happened in connection with the elections at Shiggaon. The petitioner himself had no idea originally of making a speech, but it is this enthusiastic request made by a part of the audience that had the physical effect of moving the 1st petitioner towards the rostrum and the emotional effect of his actually making a speech; if really he was confined in the house of Hanumanth gouda Patil he should have narrated the fact of actual confinement in the said speech. If such were the position, the most natural conduct of his part was to describe all these things in detail. In the said speech, he even forgot to mention the name of Patil Puttappa who has been specifically charged in Ex. P. 3 sent that evening.

268. Against this background it becomes a little difficult to accept the case of actual confinement.

269. Another line of scrutiny is on the basis of the conduct of the petitioners immediately after their release. Before doing so, I should first make reference to cartain features peculiar to the evidence of the 2nd petitioner Joshi.

270. As I have already stated he has given a more detailed and graphic description of the events than the 1st petitioner himself. In describing the conversation between

Patil Puttappa and the 1st petitioner relating to the attempts at inducements, the 2nd petitioner said that in the course of conversation, the 1st petitioner asked Patil Puttappa the specifics question as to why and for whose benefit he should withdraw his nomination, added that Patil Puttappa's reply that it was for the sake of the 1st respondent because according to him, the 1st respondent had not filed his nomination paper at all. Now this very question and answer and the sequence of surprise has been spoken to by three witnesses already, P. Ws. 3, 4 and the 1st petitioner himself as P W. 6, and according to their evidence this happened at the road crossing. If so, one may ask why the petitioner once again should repeat that question, Mr. Patil stated that because Patil Puttappa was persisting in his same request, it may not be quite unnatural on the part of the petitioner to repeat that question, may be so, But, how could he be surprised for a second time?

271. Another detail given by Joshi is that when this persuation, threats, etc., mounted to a crescendo, the 1st petitioner felt something like a fainting fit and actually reclined against a pillow next to the wall. But the 1st petitioner himself has nothing to say about this.

272. It may be that when two witnesses speak to the same happening they connot be expected to speak with absolute identity of description. Observation of different people situated at different points may be different. Their reaction may be different. But this a case in which no such difference between the two petitioners can at all be postulated. Both of them were of the same opinion in regard to the candidature of the 1st petitioner. Both of them were equally unwilling to accept the request or submit to the pressure of Patil Puttappa to withdraw the nomination. They are good friends and deeply interested in each other. Further, the actual fainting fit is a matter suffered by the 1st petitioner himself and, in the context, a matter of considerable importance. One may, therefore, ask how he could at all omit to make mention of it in the witness box where he had no other object then placing before the Court full details of his case.

273. In this connection one of the answers given by P. W. 2 Shettar assumes some significance. He said:

> "The actual narration of the details to me before I drafted the telegram Ex. P. 3 was by the 1st petitioner. The 2nd petitioner was sitting. The 2nd petitioner gave me only hearsay information, *i.e.*, what he had heard from the 1st petitioner.
>
> Q. He did not have any personal knowledge of the events?
>
> A. He gave me only hear say information."

If the answers have to be taken at their natural meaning, there cannot be the slightest doubt that the impression of Shettar was that Joshi knew nothing personally except what the 1st petitioner had already told him. He was, however, re-examined on this matter and telegram Ex. P. 3 was put into his hands which says that the signature signature of the 1st petitioner to the blank form was taken in the presence of G. V. Joshi. Mr. Shettar explained:

> "My answer to the cross-examining counsel was in general terms. I did not speak with specific reference to this statement."

Mr. Patil in the course of the arguments amplified this explanation and said that the events narrated by the 1st petitioner related partly to the case of confinement and pressure and partly to other details of the case and that as to the later Joshi could give only hearsay information. Now, apart from the details of persuation, confinement, etc., there was hardly anything else for the 1st petitioner to state before Shettar. Even before me in Court he has not stated any details besides the details relating to this case, except the filling of his nomination and his assertion that the 1st respondent's case of having filed his nomination is false. Further, the one reason, according to the evidence of both the petitioners which took them to Mr Shettar for legal assistance, was the discovery upon reading Samyukta Karnataka of the 22nd that the signatures to a blank

form and two sheets of paper taken from the 1st petitioner must have been utilised to the serious detriment of the 1st petitioner. Therefore, the only details which the petitioners had to narrate and to discuss with Mr. Shettar, were the details of this case of confinement and pressure. If so, the entire evidence of Joshi becomes difficult of acceptance. Whatever, may be the opinion of a lay man, no lawyer can be said to be ignorant of the meaning which the word 'hearsay' has in the law of evidence. So that there might not be any doubt in that regard, he has himself explained what he meant by that word, and stated that what the 2nd petitioner told him was what he had already heard from the 1st petitioner.

274. Assuming for the moment that the above answer of Mr. Shettar may not be clearly or fully descriptive of what the 2nd petitioner have told him, there is another piece of conduct on his part which is of considerable significance.

275. I have already stated that whereas the 1st petitioner slept on the 20th night, the 2nd petitioner Joshi could not get sleep, according to his evidedce, and that somewhere about mid-night he made an unsuccessful attempt to escape. One might ask the question why he wanted to escape? What made him to entertain that desire and with what object to thought of escaping? It would have been better if this matter had been clarified in the course of the cross-examination. But, even in the absence of such questions, it appears to me that only one answer is possible to all these questions: Joshi and the 1st petitioner are good friends. According to the evidence of Joshi, he was deeply interested in the 1st petitioner geting elected and in the light of his evidence he cannot deny that what happened at the house of Hanumanthagouda Patil was an event of considerable importance from the point of view of the 1st petitioner's candidature at the election. He has also further deposed that he preferred to remain in the company of the 1st petitioner right up to 25th in Hubli because they were friends and he did not like the idea of leaving him alone. If such were his own feeling and his feelings towards

his friend, his object in escaping could not possibly be limited to securing his own freedom. It would have been with the idea of fetching assistance, first to release the 1st petitioner and then to prevent whatever action might be taken on the basis of those signatures to the detriment of the election prospects of the 1st petitioner.

276. This takes me to the examination of the conduct of both the petitioners immediately after their release.

277. If what I have stated above to be the motives of Joshi in making an attempt to escape is correct, there can be little doubt that immediately after their release, the one and the only advise which he would have tendered to his friend the 1st petitioner, was to go at once into Shiggaon, contact the frieds of the 1st petitioners and go to the 2nd respondent and apprise him of all that had happened.

278. It is not as if that the 1st petitioner was totally without help in Shiggaon. His own evidence is that he had been put up as a candidate at the election after a meeting of important members of the muslim Jamaat of Shiggaon, held on or about 14th January 1967. He has narrated the names of several important muslims of the locality. If so, I do not see why he should have simply gone away to Hubli and placed in jeopardy his prospects at the election, denying himself all the assistance which he could have obtained in Shiggaon itself. Much of the cross examination of most of the witnesses of the 1st respondent was directed towards making out that the percentage of muslim voters in the Shiggaon Constituency was considerable and not negligible or which could be totally left out of acccount. Suggestion obviously was that muslim voters did have what may be regarded as almost a decisive voice, had the election gone to poll.

279. But, both the witnesses say that they felt so deeply ashamed of themselves that they did not even like the idea of showing their faces to their friends in Shiggaon. The 1st petitioner was asked the question what mistake he

had committed to so feel ashamed of himself, the suggestion in the question being no man need be ashamed of anything done by some other person But, it may be that man's vanity is such that if he is duped by another person, he would like to conceal the fact for fear that he may be recognized as a less intelligent or more foolish man. This idea perhaps was at the back of the mind of the 1st petitioner when he said that people might laugh at him if they found that he quietly got into the car, when invited by Patil Puttappa and got duped in this matter. But it is doubtful whether such was his mental reaction or such could be regarded as having been his mental re-action at that time, because it is the same 1st petitioner who on the same night felt elated and not ashmed to make a public speech detailng all the ravage done to his prospects and injustice done to him. If he was willing to narrate all these details to a large audience, the majority of whom were not known to him, one may ask what shame he could feel to go to his own friends and supporters in Shiggaon especially when the adopting of the latter course would have had the additional advantage of saving his election against machinations of Puttappa as alleged and preventing the Returning Officer from getting deceived by Puttappa or others. That such would have been more natural conduct on his part, is clear from one of his answers that he was determined to contest the election even if it meant his securing a single vote.

280. The 1st petitioner was also asked why he did not keep his parents and wife informed about his absence, away to Hubli. He stated that on or about the 23rd, he had sent a telegram to one of his friends to inform his parents of his whereabouts. Various questions put to him and answers elicited in that regard are relied upon for the 1st respondent to show that the said statements may not be true or ought not to be believed. Apart from the questions and answers or manner in which the answers were given, there are two other circumstances which are of greater assistance to a Court. The 1st petitioner stated that there was really not any special cause for his parents or his wife to get anxious

because he used very often to go away to Hubli without informing his people at home. He also stated that he would not have sent the above telegram to his friend at all, but for the fact that a certain news item had appeared in one of the Kannada papers to the effect that he had been secretly conveyed in a car and that therefore he thought that his father might get anxious about it. Now this news item is no other than the extract from the speech which appeared in the Vishala Karnataka of 23rd January, and whoever reads that news item cannot but be convinced that the 1st petitioner was hale and hearty and was making a speech. How that could cause anything but pleasure to a father, it is difficult to understand, and the telegram, according to the evidence was sent in the afternoon of the 23rd. I do not believe, therefore, that the petitioner would have sent a telegram to any friend to inform his parents.

281. If so, the conduct of the parents in not taking any action in the matter either by way of informing the police or securing the assistance of their friends to discover where their son was, is a serious weakness in the petitioners' case of a confinement extending beyond two nights and a day.

282. Apart from the reaction of the parents, the position should also be examined with reference to what had happened or what can be expected to have happened at the office of the Returning Officer on the date of scrutiny the 21st of January 1967.

283. It is the uniform evidence of all witnesses that there was a fairly large crowd gathered at the office of the Returning Officer on the day of scrutiny. The crowd also included all the candidates of all the three Constituences. It is also quite natural to say that whatever a candidate at an election may or may not do, he may be expected to be present at the time of the scrutiny, unless of course there are any special reasons either of illness or of over-confidence on his part which prevented him from being present. The case of the petitioners is, to put it in simple English, one of

a very bold kidnapping of a candidate at election on a day immediately preceding the day fixed for scrutiny of nomination papers. Absence of a candidate in such circumstances is not a matter which I think could have escaped the notice of everybody. In Shiggaon Contituency itself, there were as many as seven other candidates excluding the 1st petitioner. Out of them except G. C. Patil and B. B. Mamle Desai, others were not Congressmen, and no one has suggested that they can be regarded as having made common cause with the 1st respondent or more accurately Patil Puttappa. The 1st petitioner has no doubt stated in his evidence that he had some suspicion about these candidates also having made common cause in the manner aforesaid, and that he had refrained from impleading them as respondents because his suspicion remained merely as a suspicion and not such a certainty as in the case of the 2nd respondent. The evidence of the 2nd respondent is that the 1st petitioner was personally present and that he had made a record to that effect in Ex. P 8. If so, the absence of the 1st petitioner could not possibly have escaped the notice of other candidates. I am unable to accept the suggestion made in the course of the argument that even the candidates have been merely told that the 1st petitioner had withdrawn and they were hustled out of their room leaving them no occasion to verify whether the withdrawal was by personal presentation or presentation through an authorised proposer.

284. If so much can be stated as to the possible turn of events or state of affairs at the Returning Officer's Office on that day, the absence of the 1st petitioner would have led to immediate circulation of the news not only among the crowd there, but also in other parts of the town as well. There is no evidence of any such circulation of the news.

285. The first occasion, according to the evidence, for such news to come to Shiggaon is what has been elicited from Hanumanthagouda Patil that the news of the speech made by the 1st petitioner reached him in the way rumours reach people sometime later about 15 days after the speech.

286. In the circumstances stated above, the making of a record of actual presence of the 1st petitioner by the 2nd respondent, if it were a false record, calls for considerable courage and daring on the part of the Officer. Ordinarily no Officer would dare to make such a record. record especially in relation to an election in the presence of people interested in the election or interested in one or other of the candidates at the election.

287 Such being the difficulty caused by intrinsic improbabilities in the evidence tendered on behalf of the petitioners, the long cross-examination of respondents witnesses and various suggestions put to them really pale into insignificance.

288. Because none of the witnesses for the respondent have stated anything which would even remotely suggest that they might be competent witnesses to speak to most of the facts, the cross-examination could only be by way of suggestions or eliciting circumstances which might probabilise the case of the petitioners.

289. For example, the going to the house of Hanumanthagouda Patil by the 1st respondent, the candidates and other persons about 40 or 50 in number for lunch, tiffin, etc., and the alleged making of a short speech by G. C. Patil at that place, have all been challenged as false by way of suggestions in the course of cross-examination. Suggestions have all been denied. Nevertheless it has been argued that the happenings at Hanumanthagouda Patil's house on the evening of the 21st are as much a pretence as the overtaking of the 1st respondent's car near Haveri. It is stated that this story of events in the house of Hanumanthagouda Patil has been deliberately concocted with a view to contradict or improbabilise the case of the petitioners that they were at that moment in actual confinement in the house of Hanumanthagouda Patil.

290. There is no way of answering this contention or dealing with it except on the basis of probabilities. If, as I have already stated the evidence of the petitioners record

ing the confinement suffers from intrinsic improbabilities whether or not any function took place in the house of Hanumanthagouda Patil or anybody made a speech, the value of the evidence of the petitioner does not get enhanced. But, if as the respondent's witnesses say and the 2nd respondent also says, the position at about 3.30 P. M. on the 21st of January was that all candidates excepting the 1st respondent alone had withdrawn their candidature, the probabilities are that the friends of the 1st respondent would have liked to have some sort of a celebration of the event and no better place than the large house of Hanumanthagouda Patil could have been selected for that purpose, especially when he was the proposer.

291. But, there is one matter on which there is no cross-examination at all on behalf of the petitioners. Both G. C. Patil as well as Hanumanthagouda Patil have deposed that after the signing of Ex. R. 111 near Haveri by the 1st respondent, Patil Puttappa and Mahalinga Shetty went straight back to Hubli. There is absolutely no cross-examination of these witnesses on this point, nor even a suggestion that this statement by them is false. Mahalinga Shetty also has made a similar statement. That statement is not directly attacked in the course of the cross examination. But, a different suggestion has been put to him to which I have already made reference.

292. The 2nd respondent has positively denied the presence of Patil Puttappa and Mahalinga Shetty with him in his Office on the evening or early night of the 20th of January 1967. It is no doubt a mere denial. But, the said denial gains some strength from the fact that the evidence of Jafar and Chaman Sab is not only found by me to be difficult of acceptance, but has in fact not been relied upon by the petitioners as against the 2nd respondent.

293. Another argument has been advanced to the effect that if the statements in the speech made by the 1st petitioner on the 22nd at Hubli were really false, one would have expected, people like Hanumanthagouda Patil,

G. C. Patil, Patil Puttappa, to contradict it or make enquiries with people about it, if not actually go to the 1st petitioner himself and challenge him to prove or disprove the same. Comment has been made that everyone of the witnesses for the respondents has denied having looked into the newspaper Ex. R. 6 at all and that the said denial is scarcely believable, because whatever a man may or may not do, he may in a majority of cases be expected to read what has been stated against him in any paper if only he comes to know that such things have infact been stated about him in the papers. It may be that the total denial by the witnesses that they never looked into this paper is not quite acceptable. But, I cannot accept the argument that their re-action to that would have been of the type suggested in the argument. Re-actions of people to matters of this nature different in the case of different persons depending upon their temperament and general outlook on things. Those who know the facts would undoubtedly know whether the statements made in the newspapers are true or false. If they are true, they may, if cautious try to cover up their tracks. And if the statements in the newspapers are false, one category of people may ignore them and another category try to contradict the same and rouse further animosity.

294. But the real fact in dispute in this case is not capable of decision on an examination of the possible reactions of people to newspapers articles. I can proceed and rightly proceed only upon a proper evaluation of the evidence tendered by the petitioner on known human probabilities. So far as that evidence is concerned, the intrinsic improbabilities in it render it very difficult of acceptance. If so, whether or not Hanumanthagouda Patil or Patil Puttappa took any action in the matter, should make no difference. It may also be that they have taken some action, the details of which have not been placed before the Court by anybody.

295. The most important question as I stated in the alleged presence or absence of the 1st petitioner before the Returning Officer on the date of scrutiny and of withdrawals.

On this matter the positive evidence of the 2nd respondent is that the 1st petitioner personally presented his withdrawal and he, the 2nd respondent did take some steps to publish a contradiction of news items suggesting the contrary. In doing so, his motives were questioned Whereas he stated that he published the contradiction Ex. R-38 because he thought that the news-items were a reflection upon him in his official capacity, it was suggested that he had done so at the instance or in the interest of the first respondent. What I have already discussed at length is sufficient to discard the theory that whatever the second respondent has done in relation to this election is motivated by desire to assist the first respondent. Once the background of the alleged *mala fides* is removed, the action of the second respondent in publishing the contradiction appears to be quite a natural piece of conduct.

296. There only remains one other argument relating to the presentation of the withdrawal form by the first petitioner.

297. Exhibit P-8 it will be remembered is in English. The first petitioner states that he does not know English and that he knows the English script only to the extent necessary to enable him to sign his name in English. He admitted however that in his book shop he sells English text-books also and that whenever any body comes for purchase of English text books he himself picks out the book required and hands it over to him. He also admitted that in English text books there is not printed the name of the book in Kannada script. There was one text book referred to by him. The title of that book was 'Fragrant Petals'. I could not follow his pronounciation and he therefore assisted me by writing out the title in Kannada script. I cannot say whether this pronounciation taken along with this writing should be taken as indicative of total ignorance of English language on the part of the witness or an attempt to lend further point to his claim that he does not know English at all.

298. But, there are two circumstances which, in my opinion, make the selection of an English form in this case wholly inoperative from the point of view of the truth or falsity of the case.

299. The first petitioner admittedly can sign his name in English. If he can sign his name, surely he can read his name if written in English and after all that is all that has got to be written out in the form except the name of the place, and date. People not knowing English, signing forms of this type on being assured that the forms are intended for a particular purpose is not an uncommon occurrence.

300 Then, the second circumstance is that in the affidavit of the first petitioner in verification of the particulars of corrupt practice set out in the petitioner affirmed before a Notary Public contains no certification that the English text has been interpreted.

301. In view of all these circumstances and the difficulty I have felt in placing any reliance on his oral evidence, I do not think much can be made out of the circumstance that the form Exhibit P 8 is in English whereas for presenting his nomination the first petitioner had selected Kannada form.

302. But, there is something more about this form which is made use of for another purpose. The petitioner in his evidence had stated that he had not filled in the blanks in the form, nor had he asked anybody else to do so for him. When Hanumantagouda A. Patil was in the box, suggestions were put to him that the name of the first petitioner had been written by him and that the same is in his writing. He denied the suggestions. When Mahalinga Shetty in the box the same suggestion was put to him and he denied that the writing was his. He was asked whether the writing was not of Patil Puttappa's; he said it does not appear to be that of Patil Puttappa and apparently with a view to obviate further questions, he added that he did not know whose writing it was.

303. It is the evidence of all the witnesses for the 1st respondent that the blanks in his nomination form Ex.R. 11 had been filled by Patil Puttappa. A part of this is in capital letters, apparently for legibility. The name of the proposer Hanumanthgouda Patil, however, is written out in ordinary manuscript. According to the evidence, that writing is clearly that of Patil Puttappa.

304. It is therefore argued on behalf of the petitioners that I should compare the writing "Hanumanthagouda Ayyanagouda Patil" in Ex. R. 11 with the writing "Khader Khan Hussain Khan" in Ex. P-8 and hold that in all probability the letter writing is also that of Patil Puttappa.

305. There would have been some strength in this argument if the petitioners had been consistent in their case that Patil Puttappa who filled the blanks in Ex. R. 11 also filled the blanks in Ex. P-8.

306. The cross-examination on their behalf shows that they were merely trying to sound witness after witness so that they may ultimately pitch upon some witness to admit the writing to be his or depose that the writing is Patil Puttappa's. Apart from the fact that depending upon or drawing any inference on the basis of rejected suggestions is an impossible thing for a Court to do, suggestions of complicity in fraudulently filling up a form signed in blank has to be be proved by positive and acceptable evidence. It is not possible upon mere suggestions and suspicions to ask a Court to hold a state of affairs to be true suggesting the commission of more than one offence punishable under law.

307. When the 2nd respondent was in the witness box, the manuscript writing in the upper half of Ex. P-8 was brought to his notice. It was elicited from him that the person who wrote the name of the first petitioner there appeared to be different from the person who had entered the name of the town Shiggaon at two places leading to the inference that the blanks in Exhibit P-8 had been filled

not by one person but by two persons. He was asked whether this circumstance did not excite his suspicion. He categorically stated that he did not find anything suspicious in the matter because he has seen any number of forms the blanks in which had been filled by different persons or in different writings.

308. Thus, the cross-examination of the second respondent is really destructive of even the suggestions made to the other witnesses. If it was the case of the petitioners that Patil Puttappa was the person exclusively responsible for writing the manuscript portion of Exhibit P-8 and some support for the theory of responsibility was sought in the suggestions of his presence at the Returning Officer's office at various points of time, the eliciting from the second respondent of the existence of more writings than one or writings of more than one person on Exhibit P-8 shakes that theory.

309. But, what is of greater importance is that no suggestion was made to the second respondent that the writing might be this. As I have already observed, one of the important circumstance in this case is that the 2nd result of alleged plan could not possibly succeed without the complicity of the second respondent. Hence, if the petitioners wanted to make out their case on this aspect of the form it was up to them either to elicit from 2nd respondent when he was in the box or at least suggest to him circumstances which would make out either that he himself was responsible for completing Ex. P-8 or that the completion of Ex. P-8 was a matter directly witnessed by him. On the contrary, the cross-examination of the 2nd respondent seems to suggest that the 2nd respondent knew nothing about the completion of the paper. Specific questions were put to him as to the existence of different writings to excite his suspicion which implies that he had nothing to do with the form before it was presented to him.

310. The last argument upon facts which has to be dealt with under this matter has been made possible by the 1st respondent not examining Patil Puttappa.

311. Just before the close of the evidence of the 2nd respondent, an application I. A. II was filed by the petitioners' counsel requesting me to summon Patil Puttappa as a Court Witness. 1st respondent's counsel has filed a set of a objections. But both counsel are agreed or proceeded upon the footing that the discretion is entirely of the court, in the matter of calling or not calling Patil Puttappa as a Court witness. When such is the clear legal position and both sides are quite aware of it, the filling of the application and the filing of the objections, in my opinion, serve no better purpose than placing on record mere arguments. The said Statements are, in my opinion, unnecessary and uncalled for. Both parties recognise that the only question for consideration is the effect of non-examination of Puttappa on the value of evidence already placed on record.

312. Patil Puttappa had been named as a witness in the lists filed by both the parties. Whereas the 1st respondent merely described him as a person who may be called upon to give oral evidence, the petitioners also wanted that he be summoned to produce his account books showing the amount of money collected by him from the Government by way of charges on Government advertisements in his papers 'Viswavani' and 'Prapancha'. He made a return to the summons that he had not maintained separate accounts of advertisement charges, that it may take a long time for him to pick out the figures for various years referred to in the summons and that therefore he may be given some time. He was not present in court on 4th July 1967, the date of commencement of trial. But I was told that he might be present on the following day. He appeared on that day, 5th July 1967, and stated that he had made a request to the Director of Information and Publicity to give him a statement of figures gathered from the official papers and further stated that he will be in a position to make a clearer statement two days later. He was asked to appear on the 7th July 1967. On that day he produced a tabulated statement given to him by the Director of Information and publicity which was later marked as Ex. P. 11 through the 1st respondent as R. W. 1:

Upon his producing that statement in Court, Mr. B. S. Patil, learned counsel for the petitioners, stated that he had nothing more to do with Patil Puttappa as a witness. I therefore permitted him to go.

313. Earlier, I had asked both the counsel to make up their minds as to which of them was going to examine, him, because apart from the Court getting suspicious about the value of the evidence of the witness, it has to be stated that the witness as a person was entitled to fair treatment at the hands of the parties. But apparently at that stage, neither counsel was prepared to make any definite statement as to whether he would examine Patil Puttappa on his side The petitioners' counsel had apparently done with him. Mr. Ethirajulu Naidu for the 1st respondent stated that it was too early for him to make a statement on behalf of his client as to whether he would examine Patil Puttappa or not. But because I had put a specific question to him, he said, apparently out of deference to me, that if Patil Puttappa was going to be examined on behalf of the petitioners, it will then be not necessary for him to do any thing more than cross-examine him, but that if the petitioners were not going to examine him, in all probability he may not examine him on behalf of the first respondent.

314. Ultimately, either side examined Patil Puttappa.

315. From what is stated above, one thing is clear and that is, the relevance of Patil Puttappa' sevidence being only on the case of corrupt practice, the burden of proving which is on the petitioners, the attitude of the Counsel merely represented a desire on the part of one Counsel to lighten his burden and a desire on the part of the other counsel to wait and see.

316. That it was so is clear from the arguments pressed by Mr. B. S. Patil on the basis of the principle that though it is undoubted that the burden of proving a case of corrupt practice is entirely and exclusively on a

petitioner in an election petition the said rule does not absolve the respondent of his responsibility to assist the Court by producing the best evidence available and that on his failure to do so it may be open to the Court to draw such inferences against him as may appear to be just and reasonable.

317. It is with a view to make use of this principle that Mr. Patil has given the reasons why it was in his opinion necessary for the first respondent to examine Patil Puttappa. Those reasons may be briefly summarised as follows.

318. It will be seen that both from the petition as well as from the evidence tendered on behalf of the petitioners the main attack was directed against Patil Puttappa. In fact almost all the details of transactions resulting in the alleged commission of corrupt practices or bribery and undue influence are details of the acts of Patil Puttappa. He has been described as a stooge of the first respondent treating him to extensive hero worship. That he is such is sought to be made out from large amounts paid to him by the Government as charges for Government advertisements in his newspapers. Exhibit P-11 as to which the first respondent stated that the figures stated therein must be correct shows that such charges rose from about 26 or 27 thousand rupees in the year 1962-63 to Rs. 1,54,000 in the year 1967-68. So far as the particulars of corrupt practice are concerned, there is in the written statement of the 1st respondent no traverse on his personal knowledge, nor has he in the course of his evidence stated anything on his personal knowledge in regard to the case of corrupt practice. Mahalinga Setty who was examined as R. W. 4 is the person who is said to have been in the company of Patil Puttappa throughout the transaction resulting in the commission of corrupt practice. From him a denial was elicited on behalf of the first respondent to the effect that he was not present in the Office of the Returning Officer on the night of 20th January 1967 as spoken to by P. Ws.

3 and 4. Thereafter, denials were elicited from him regarding the subsequent details of the transaction. Once he denied his presence at the initial stage, his subsequent denials, according to the argument, are of no value because they would all add to no more than a denial of his presence.

319. In view of all these, it is stated that so far as the case of corrupt practice and details thereof are concerned, the only person who could have denied them or spoken about them on his own personal knowledge, would be Patil Puttappa and nobody else.

320. In addition, it is stated that by reason of answers elicited in the cross-examination of witnesses, it has been suggested or probabilised that the writing of the name of the 1st petitioner on the withdrawal form Ex. P-8 was that of Patil Puttappa himself.

321. One other argument which Mr. B. S. Patil did not state but which I may add is that the 1st respondent's witnesses did assign an important role to Patil Puttappa in the matter of persuading the 1st respondent to stand as a candidate. Even G. C. Patil, who, with others, went to the house of Mahalinga Shetty on the night of 19th January 1967 thought it necessary or desirable to invite Patil Puttappa and seek his assistance and it is common evidence of all the witnesses for the 1st respondent that the manuscript writing on the nomination form Ex. R. 11 was that of Patil Puttappa. Mahalinga Shetty has further deposed that Patil Puttappa has also come to Shiggaon and to the office of the Returning Officer on the morning of 21st January 1967 and that both he and Patil Puttappa went with the 1st respondent after 3-30 P. M. to the House of Hanumanthgouda Patil and then to Savanur and then to Bankapur.

322. Now, this entire argument would not have been available to the petitioners if, instead of examining Mahalinga Shetty, the 1st respondent had examined Patil Puttappa. From the point of view of the development of

the 1st respondent's case, as I have already stated, the evidence of Mahalinga Shetty was quite unnecessary in view of all the details deposed to by G. C. Patil. On the second part of the case of corrupt practice, Mahalinga Shetty had nothing to say and could not say anything because he had denied his presence in the Office of the Returning Officer on the night of 20th January 1967. In Addition, he made available to the petitioners the further fact that not only he but also Patil Puttappa had come to Shiggaon on the morning of 21st January 1967.

323. The question therefore is whether the non-examination of Patil Puttappa amounts to an omission on the part of the 1st respondent to place the best evidence before the Court.

324. The burden of proving corrupt practice, admittedly and undoubtedly, rests upon the petitioners. Their case of corrupt practice did not stop with what was apparently their case at the time Ex. P-3 and Ex. R-8 were issued. They added the case of continued confinement and tried to make out a case larger than was necessary for the purpose of getting the election set aside. The result has been, that the petitioners' evidence contains several intrinsic improbabilities making it almost impossible for the Court to accept even a part of their case. They also implicated the 2nd respondent making it necessary for them to charge him with *mala fides*. With no evidence adduced in support of the case, they, tried to build a case on theories which could not possibly stand scrutiny.

325. At the close of the evidence, Mr. B. S. Patil himself observed and in my opinion, rightly, that having regard to the two central points in controversy covered by issue No. 1. and issue No. 2, the determining factor in his case would be the value to be placed on the evidence of the Returning Officer, the 2nd respondent, and rest of the evidence tendered by the witnesses on two sides would be merely evidence of background facts which will be of

little or no use to either side. It appears to me that it is quite a correct appreciation of position in this case.

326. If that position is correct and if the only assistance that I have in this case to decide or chose between the two versions placed before me is the extent of reliance that I can place on the evidence of the 2nd respondent which was the one and only difficult question which I had to address myself to and consider at length, it would mean that the rest of the evidence is really of no assistance to the Court. If the 2nd respondent could be believed when he says that notice of withdrawal Ex.P-8 was presented to him by the 1st petitioner personally, it matters little whether and if so, for what reasons, the 1st petitioner presented his withdrawal. He might have done so either on persuation or at his own volition. But so long as he is not able to prove by acceptable evidence that he did so as a result of any corrupt practice resorted to by the 1st respondent, any amount of theorising is not going to assist him.

327. I believe Mr. Patil realised this position when at the close of his arguments he tried to make out an alternative position for his client. He stated that even if it should be difficult to disbelieve the 2nd respondent when he says that the 1st petitioner had presented Ex.P-8 to him, nevertheless, the case of undue influence need not fail altogether. He stated that undue influence might have been of such a nature or that the exercise thereof had actually put the 1st petitioner in such fear that even if he should have personally come and presented the paper, it might still be open to him to prove that he was not acting as a free agent. But the 1st petitioner has disabled himself from making any attempt to take up this alternative position by over-stating his case originally. Further, the acceptance of the evidence of the 2nd respondent that when he asked each candidate including the 1st petitioner whether he had really withdrawn his candidature and accepted the notice of withdrawal after satisfying himself on that point makes it difficult to accept the theory that the 1st petitioner must have been still under the influence of some fear instilled in him. It is perhaps with a view to meet this

that Mr. Patil very strongly pressed his argument that Mahalinga Setty and Patil Puttappa had no business to be present in Shiggaon on 21st January and that if they had come there it was because they wanted to see that what they had already been planning did not fail at the last moment. But the position taken up by the 1st petitioner especially in denying his presence on 21st at Shiggaon and the fact of his having presented Ex. P–8 personally and the evidence which he has given-making it clear that he was quite anxious and eager to stand for election and in the attitude he persisted in spurning all overtures of Patil Puttappa, all go to show that whatever might have been the attempts by inducement or undue influence before he came personally to the Office of the Returning Officer, he is not the person who can be expected to continue to be under any fear in the presence of the Returning Officer and other members of the public in the office. Even if he had promised Patil Puttappa earlier that he would withdraw, he would have gone straight to the Returning Officer's Office, got his nomination paper scrutinised and accepted and then declined to withdraw.

328. With all these difficulties in accepting the alternative theory propounded by Mr. Patil, the weakness in their original case invited by the petitioners themselves by putting up a case upon theories which they could not prove, I think, disentitles them from arguing that non-examination of Patil Puttappa is depriving the Court of the best evidence available to the 1st respondent.

329. So far as the writing on Ex. P-8 is concerned, I have already made my observations and stated my opinion that there is nothing in the evidence already brought on record even to suggest, much less probabilise, that the writing of the name of the 1st petitioner on Ex. P-8 is that of Patil Puttappa.

330. Regarding the large advertisement charges received by him, the argument on behalf of the petitioners that he is very much beholden to the 1st respondent would

have been of some value to them, but for the fact that to more than one witness it was suggested that when the 1st respondent was out of office and when Mr. Jatti became Chief Minister he was praising Mr. Jatti and denouncing the 1st respondent which only means that the petitioners themselves want to show him up as a man of doubtful loyalties and hence not quite reliable as a witness. If so, there is no clear statement of the case that Patil Puttappa is the person who might do anything for the purpose of getting the 1st respondent elected.

331. The real importance of the evidence of Patil Puttappa to the case of the petitioners appears to be limited to the alternative argument raised, *viz*, that though Ex. P-8 might have been presented personally by the 1st petitioner, he must be deemed to have been still under the influence of fear. For deciding the case as originally stated culminating in the absence of the 1st petitioner before the 2nd respondent on 21st January, the evidence of the 2nd respondent accepted by me is itself sufficient to discard the same, making it unnecessary for me to record and examine the evidence of Patil Puttappa, just as he has been unnecessary for me to examine in great detail the background of the case put forward by the 1st respondent. But if the alternative theory is to be made out, it could only be made out by eliciting for the purpose some admissions from Patil Puttappa if he is called as a witness. The application therefore to Court to call him as a Court witness, while expressly stating that the same was a matter left to the discretion of the Court and not sought by a prayer, should really be regarded as an attempt to lay the foundation for an alternative theory if the 1st theory should fail. Hence, the argument that non-examination of Patil Puttappa is suppression of the best evidence by the 1st respondent is really an argument to cover the weakness of the petitioners' own case and not to make out that the Court is being deprived of assistance.

332. This disposes of all the arguments on facts so far as issues 2, 3 and 4 and concerned.

333. There is only one point of law not suggested in the petition but raised in arguments which I should notice.

334. Withdrawals are presented under Section 37 of the Representation of the People Act, 1951, the first sub-section of which reads:

> "37 (1). Any candidate may withdraw his candidature by a notice in writing which shall contain such particulars as may be prescribed and shall be subscribed by him and delivered before three O' clock in the afternoon on the day fixed under clause (c) of section 30 to the Returning Officer either by such candidate in person or by his proposer or election agent who has been authorised in this behalf in writing by such candidate."

335. It is pointed out that the time for delivery is "before three O'Clock *in* the afternoon *on* the day fixed," whereas section 33 dealing with the presentation of nomination paper uses the words "on or before the date appointed *** ". The argument is, whereas section 33 refers to a period ending with a certain date section 37 refers to a single day and that day is the date fixed for under clause (c) of Section 30, and that therefore presentation of withdrawal notice at any time prior to 23rd January 1967 is wholly inoperative or void. Apart from the fact that the argument, if accepted, would render the withdrawal of candidature of seven other candidates also void, making the petition itself incompetent in view of the second prayer, section 37 cannot be read in the manner suggested. When it says that the withdrawal notice should be presented before three O'Clock on a particular day, it also says that the said day is the day fixed under clause (c) of Section 30. That clause describes that day as the last day for withdrawal. Reading the two together, it only means that three O'Clock in the afternoon of the day fixed under clause (c) is the last moment of time before which the withdrawal should be presented. The

beginning of that period during which the notice of withdrawal can be presented is not stated, but it has to be inferred from the fact that there must be an accepted nomination before it could be withdrawn. Probably, the beginning of the period, therefore will be the acceptance of the nomination which is earlier than the day fixed for scrutiny by more than one day. I find therefore no substance in this argument.

336. I therefore record the following findings on issues 2, 3 and 4:

**Issues No. 3** (*a*).—The petitioners have failed to prove that Patil Puttappa, Mahalinga Shetty, Nadaf Jafar Saheb and Hotti Peersabnavar Chamansab Bhudusab, referred to in paragraph III (i) of the petition, either offered inducements to the first petitioner or subjected him to threats with a view to secure his withdrawal of his nomination in the circumstances set out in sub-paragraphs (i) and (j) of paragraph III of the petition.

**Issue No. 3** (*b*).—As the facts themselves have not been established, the question whether there was consent prior or subsequent to the commission of corrupt practice does not arise; if necessary, proof of any such consent.

**Issue No. 4.**—As no facts as alleged have been established under issue No. 3, the petitioners have failed to prove the Commission of the corrupt practice of bribery under sub-section (1) and or undue influence under sub-section (2) of section 123 of the Representation of the People Act invalidating the election of the first respondent.

**Issue No. 2.**—The petitioners have failed to prove that the 1st petitioner had not in fact withdrawn his nomination paper. On the contrary, it is established by evidence that the 1st petitioner has himself presented his notice of withdrawal

to the 2nd respondent. The petitioners have failed to prove that the said notice of withdrawal was invalid for any reason.

337. For the reasons already discussed, I.R. No. II is dismissed.

338. The fifth issue does not call for much discussion in view of the fact that the evidence bearing thereon has already been discussed by me in detail under issues 1 and 2.

339. The assistance amounting to corrupt practice under sub-section (7) of Section 123 said to have been obtained by the 1st respondent from the 2nd respondent is restricted to two matters,—(1) the presentation of the nomination paper of the 1st respondent and (2) the withdrawal of candidature by the 1st petitioner. The statement of particulars in sub-paragraph (k) of paragraph III of the Petition is also that the particulars are the same as have been set out in sub-paragraphs (*a*), (*b*), (*c*), (*d*), (*e*), (*f*), (*g*) and (*h*) thereof.

340. So far as the reception of the nomination paper is concerned, the ultimate suggestion is that formulated in sub-paragraph (*g*) of Paragraph III, *viz.*, that by manipulations and manoeuvres the nomination paper of the 1st respondent has been ushered in. The said case rests entirely upon the allegation that the 2nd respondent has been a special favourite of the 1st respondent with a long-standing bond of intimacy between them and that by virtue of the same, the 1st respondent has utilised the assistance of the 2nd respondent to take on record a nomination paper which was in several particulars seriously defective. I have discussed the question of alleged *mala fides* of the 2nd respondent and come to the conclusion that all the attacks made against his *bona fides* are without substance. The said finding is sufficient to hold that no case of corrupt practice under sub-section (7) of Section 123 has been committed in relation to the reception of the nomination paper of the 1st respondent.

341. As to the withdrawal of candidature by the 1st petitioner, the matter is closely related to the case of corrupt practice which has been made the subject of Issue No. 3. While discussing the evidence in relation thereto, I have already pointed out that the petitioners' success on that part of the case depends largely, if not exclusively, on their being able to prove complicity of the 2nd respondent in the corrupt practice stated in Issue No. 3 itself. While examining the evidence thereon, I have pointed out that apart from intrinsic improbabilities in the evidence adduced by or on behalf of the 1st petitioner, the virtual giving up of one portion of the evidence of P.Ws. 3 and 4 has had the effect of totally breaking this link of alleged complicity of the 2nd respondent in the matter of the presentation of the withdrawal notice Ex. P-8. That opinion is sufficient to hold that no corrupt practice within the meaning of sub-section (7) of Section 123 is proved to have been committed in relation to the reception of the 1st petitioners' withdrawal of candidature Ex. P-8.

342. My finding on issue No. 5 therefore is that the petitioners have failed to prove that either in the matter of the presentation of the nomination paper of the 1st respondent or in the matter of withdrawal of the candidature of the 1st petitioner, the 1st respondent had secured the assistance of the 2nd respondent in such a way as to amount to corrupt practice under sub-section (7) of Section 123 of the Representation of the People Act.

343. The findings already recorded as above are sufficient to find issues 6 and 7 against the petitioners. On those findings it has to be held that the petitioners are not entitled to the declaration that the election of the 1st respondent is void or that the 1st petitioner is or has been duly elected. I hold accordingly.

344. In the result, the Election Petition is dismissed. The petitioners will pay costs of the respondents in two different sets, one set for each respondent.

345. At this is an original judgment, the Registrar will calculate costs of all the parties in three different sets and append the Memoranda of Costs to this judgment—one memorandum of costs of the petitioners, one of the 1st respondent and one of the second respondent. In each of these sets, Advocate's fee will be assessed at Rs. 1,500.

(Sd.) A. NARAYANA PAI,
JUDGE.

By order,

K. S. RAJAGOPALAN,
Secretary to the Election Commission,
India.